

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

Case No. 11-20129

6 -v-

7 RONALD ROBERTS, D-1, and SCOTT
8 SUTHERLAND, D-2,

9 Defendants.
10 /

11 EVIDENTIARY HEARING, VOLUME II

12 BEFORE THE HONORABLE ROBERT H. CLELAND
13 United States District Judge
14 Theodore Levin United States Courthouse
15 231 West Lafayette Boulevard
16 Detroit, Michigan
17 July 25, 2011

18 APPEARANCES:

19 FOR THE PLAINTIFF: SAIMA MOHSIN
20 HALA JARBOU

21 FOR THE DEFENDANT: WILLIAM HACKETT
22 (Sutherland)

23 CRAIG TANK
24 (Roberts)

25 To Obtain a Certified Transcript Contact:

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1 Detroit, Michigan

2 July 25, 2011

3 9:33 a.m.

4 * * *

5 (Call to Order of the Court; all parties present.)

6 THE CLERK: Calling case number 11-20129. The United
7 States of America vs. Scott William Sutherland and Ronald
8 Raymond Roberts.

9 Please state your name for the record, counsel.

10 MS. MOHSIN: Good morning, your Honor. Saima Mohsin
11 and Hala Jarbou appearing on behalf of the United States.

12 MS. JARBOU: Good morning.

13 MR. HACKETT: Good morning, your Honor. William
14 Hackett on behalf of Scott Sutherland.

15 MR. TANK: Good morning, your Honor. My name is Craig
16 Tank, and I appear on behalf of Mr. Roberts.

17 THE COURT: Both defendants are personally present, I
18 note. And, Mr. Hackett, it continues I think to be your
19 hearing, doesn't it?

20 MR. HACKETT: I believe, Judge.

21 Your Honor, just, just briefly. I have some witnesses
22 that were subpoenaed that are Detroit police officers. And
23 other than Christopher Quarello and Daniel Woods, I don't
24 believe they are present.

25 They were served. I did get a call prior to the last

1 hearing from two of them that indicated that they were sick and
2 that they weren't planning on being here. And that wasn't for
3 this date. However, the attempts that I made to get in contact
4 with them through their commanding officers and their sergeants
5 were in vain. The numbers that I have, ring twice and go to
6 busy signals. So I have several witnesses that were subpoenaed
7 that would be either -- that have not shown up. And those are
8 all Detroit police officers.

9 I do have one witness that is on the way. She had a
10 flat tire. She's getting another ride. And I do have one
11 witness that's ready to go. I believe that Mr. Tank has a
12 witness as well, that's ready to go.

13 With that, Ashley Will, or no -- yeah. Ashley Will is
14 the name of the witness.

15 (Witness is sworn.)

16 ASHLEY WILL

17 called as a witness at 9:35 a.m. testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HACKETT:

20 Q. Good morning.

21 A. Morning.

22 Q. You'll have to speak up --

23 A. Good morning.

24 Q. -- so we can hear you.

25 Okay. Would you state your name, please, for the

1 record?

2 A. Ashley Lynn Will.

3 Q. Okay. Ashley, how old are you?

4 A. Twenty.

5 Q. Okay. Do you recall the date of February 12th, 2011?

6 A. Yes.

7 Q. Okay. And what happened on that date that you would
8 remember it?

9 A. I came over to the house. And I was outside in my car.
10 And I was waiting for Brandy.

11 Q. Where was the house at?

12 A. Dresden.

13 Q. Do you remember the address?

14 A. No.

15 Q. Okay. Do you remember why you were there? Were you
16 visiting somebody?

17 A. Yeah.

18 Q. Who were you visiting?

19 A. Brandy.

20 Q. Who is Brandy?

21 A. My friend.

22 Q. Who is Brandy?

23 A. My friend.

24 Q. What's her last name?

25 A. Irwin.

1 Q. Okay. And why were you at this house on Dresden to visit
2 her?

3 A. Because that's where she was living.

4 Q. Okay. She was living there on Dresden?

5 A. Yes.

6 Q. Okay. And about what time -- what time was this that you
7 were at the house on Dresden?

8 A. Like between twelve and one o'clock.

9 Q. Twelve and one o'clock? Is that in the afternoon?

10 A. At night.

11 Q. Or is that in the morning?

12 A. Midnight.

13 Q. Okay. Twelve midnight, one o'clock. And you had indicated
14 that you were sitting out in front?

15 A. Yes.

16 Q. How were you sitting out in front?

17 A. In the car.

18 Q. In your car?

19 A. Two houses away from the house.

20 Q. Okay. When you say two houses away from the house?

21 A. Well, it was like this one and I was across, but on this
22 side, on the opposite side.

23 Q. You were on the opposite side of the street?

24 A. Yes.

25 Q. And you were one house or two houses down? Is that what

1 you're saying?

2 A. Diagonal.

3 Q. On a diagonal?

4 A. Yeah.

5 Q. Okay. Was it one house over or two houses over?

6 A. One.

7 Q. One house over. Could you see the house from where you
8 were at?

9 A. Yes.

10 Q. Okay. And did you have a good view of the front of the
11 house?

12 A. Yes.

13 Q. Okay. And when you looked, when -- you can remember what
14 the house looked like?

15 A. Yes.

16 Q. Okay. While you were sitting there, what did the house
17 look like? I mean, was it, was it completely boarded up?

18 A. Just the windows.

19 Q. Just the windows? Was the door boarded?

20 A. No.

21 Q. The front door?

22 A. No.

23 Q. Okay. Was there a porch light on?

24 MS. MOHSIN: Objection as to leading, your Honor.

25 That's the third leading question.

1 THE COURT: Actually, that one I think was not. And
2 overruled.

3 MR. HACKETT: Thank you.

4 BY MR. HACKETT:

5 Q. Was there a porch light on; if you recall?

6 A. Yes, there was.

7 Q. Okay. Was there any vehicles in the driveway?

8 A. Two.

9 Q. Which two?

10 A. A van and car.

11 Q. Okay. You say a van. What, what color was the van?

12 A. It was like a minivan. A smaller -- it was like a minivan.
13 It was white.

14 Q. A white minivan?

15 A. I don't know the, what kind of van it was, but I know it
16 was a van.

17 Q. Okay. And you said that that was in the driveway?

18 A. Yes.

19 Q. Whereabouts in relation to the house was that, that van?

20 A. Like up by the side, but not far up, but like so that a car
21 can fit behind it. That's how far up.

22 Q. And was -- and you indicated there were two cars --

23 A. Yes.

24 Q. -- in the driveway? And what was the other car?

25 A. I don't know. I think it was like Focus or something.

1 Q. Okay.

2 A. I don't know the name of it.

3 Q. Do you remember the color?

4 A. Black.

5 Q. It was black? Was it four door, two door?

6 A. Four.

7 Q. Okay. Now, at some point, did you have some contact with
8 some police officers that night?

9 A. Yes. When they came up to my car.

10 Q. Okay. And you say "they" or was there one?

11 A. Well, there was two in one car.

12 Q. Okay.

13 A. A passenger and a driver.

14 Q. What kind of car were they driving?

15 A. It was like a Jeep or Escalade car, police car.

16 Q. It was an SUV?

17 A. Yeah, SUV.

18 Q. Did it have lights on it?

19 A. Yeah.

20 Q. And it said "police" on it?

21 A. Yeah.

22 Q. Okay. And they spoke to you?

23 A. Yes.

24 Q. What did they -- as a result of them talking to you, what
25 did you do next?

1 A. I called Brandy when I was outside when they were next to
2 me. And she told me that to go up to the door and Ronnie would
3 let me in and wait for her.

4 Q. Okay. And is that what you did?

5 A. Yes.

6 Q. Okay. And so you got out of your car and you walked across
7 the street?

8 A. Yes.

9 Q. Okay. And then what happened?

10 A. Then I went up to the door and they were, Ronnie and Scott
11 were leaving as I was going in.

12 Q. Okay. Had you ever seen Mr. Sutherland before that night?

13 A. No.

14 Q. Okay. Have you seen Ronnie before that night?

15 A. Yes.

16 Q. Okay. Now, you had indicated Brandy wasn't there?

17 A. Yes.

18 Q. Okay. And she tells you to go up to the house?

19 A. Yes.

20 Q. So what happened when you got to the door?

21 A. I walked in and then I stood by the couch, set my purse
22 down, and then I heard fighting outside.

23 Q. You say you heard fighting outside?

24 A. Yeah. I heard yelling.

25 Q. And, you know, how would you know that you heard fighting?

1 A. Well, I heard yelling, but I don't know what exactly
2 happened because I wasn't -- I couldn't see. But I heard
3 yelling, and then everyone ran in the house.

4 Q. When you say everyone ran in the house --

5 A. Like --

6 Q. -- who?

7 A. -- five cops.

8 Q. There were five police officers that ran in the house
9 right --

10 A. Yeah.

11 Q. -- afterwards?

12 A. Yes.

13 Q. Okay. I mean, within how long?

14 A. I was standing by the couch, and then I just put my purse
15 down. And two seconds after I heard screaming is when they ran
16 in and asked me who is all in there.

17 Q. And you say there were five police officers?

18 A. There was, yeah.

19 Q. At least?

20 A. Yeah.

21 Q. Okay. And what, what did you do as a result of that?

22 A. Freaked out. I sat on the couch.

23 Q. Did you do that because you were told to sit on the couch?

24 A. I didn't know what else to do, so I just sat there.

25 Q. Okay. Now, at some point, did someone come in the house

1 with a weapon?

2 A. Yes.

3 Q. Okay. And you could hear them talking about this weapon,
4 right?

5 MS. MOHSIN: Objection, your Honor, as to the leading
6 nature of these questions.

7 THE COURT: That was leading, I agree. Go ahead.

8 MR. HACKETT: I'll rephrase. I'll rephrase.

9 BY MR. HACKETT:

10 Q. Did you hear anyone talking about anything they may have
11 found?

12 A. No. Only when he came in with it, one cop came in with it.

13 Q. Came in with -- what did he come in with?

14 A. He said it was a rifle.

15 Q. Okay. And you say he came in?

16 A. He came in from outside.

17 Q. Okay. And did anything he say lead you to believe where he
18 got it from?

19 A. No.

20 Q. Okay. Is there anything, you know -- how long did you sit
21 on the couch?

22 A. Until they let me go.

23 Q. Okay. And how long was that; do you know?

24 A. At least a good half hour.

25 Q. Another half hour? Okay.

1 MR. HACKETT: And I have no further questions. Thank
2 you.

3 THE COURT: All right.

4 MS. MOHSIN: May I have a moment, please, your Honor?

5 THE COURT: Yes, ma'am.

6 MS. MOHSIN: No questions for this witness, your
7 Honor.

8 THE COURT: I need a little clarification. You said
9 that your friend was Brandy; is that right?

10 THE WITNESS: Yes.

11 THE COURT: And you said you were there to see Brandy?

12 THE WITNESS: Yes.

13 THE COURT: Waiting for her?

14 THE WITNESS: Yes.

15 THE COURT: And you said that when you called her, I
16 presume that means on a telephone, right?

17 THE WITNESS: Yes.

18 THE COURT: And she wasn't there?

19 THE WITNESS: No. She went to McDonald's and she told
20 me she'll be right back. And she took a little longer.

21 THE COURT: I'm sorry?

22 THE WITNESS: And she took a little longer than what I
23 thought.

24 THE COURT: Okay. So you walked in the house?

25 THE WITNESS: Yeah.

1 THE COURT: Okay. This was a house that had
2 boarded-up windows, right?

3 THE WITNESS: Yes.

4 THE COURT: You've been there before?

5 THE WITNESS: I picked her up from there a few times.

6 THE COURT: And that's it?

7 THE WITNESS: I sat on the couch and watched a movie
8 with her like twice.

9 THE COURT: In this house. And were the windows
10 boarded up when you were there before?

11 THE WITNESS: Yes.

12 THE COURT: Yes?

13 THE WITNESS: (Nodding head.)

14 THE COURT: Okay. Anything else? Mr. Tank, do you
15 have questions?

16 MR. TANK: I do, your Honor.

17 THE COURT: All right. Go ahead.

18 DIRECT EXAMINATION

19 MR. TANK:

20 Q. Ma'am, if you could describe the inside of this, this home.
21 Were the walls painted?

22 A. Yes.

23 Q. All right. Could you tell, I mean, how long ago that they
24 had been painted?

25 A. They looked -- everything looked fresh.

1 Q. Okay. Was there carpets?

2 A. Yes.

3 Q. And did the carpet appear to be new, old or you couldn't
4 tell?

5 A. I couldn't tell.

6 Q. Okay. Now, with respect to these windows being boarded
7 out, outside of -- or if you were to look at where the windows
8 are, was there an actual window there?

9 A. Behind the board?

10 Q. Yes.

11 A. Yes.

12 Q. Okay. And if you know, how long had those windows been
13 there?

14 A. I don't know.

15 Q. Okay. As you're sitting inside this home, do the
16 furnishings or the -- strike that.

17 As you're sitting inside the home and you look at, for
18 example, the carpet and the painting, does it appear to be new
19 or old?

20 A. New.

21 Q. Okay. When you say new, how new do you mean?

22 A. Like there were no stains on the carpet.

23 Q. Okay.

24 A. And walls, I see no, like, dirty walls or nothing.

25 Q. All right. Now, as you enter into the home, there's a

1 couch downstairs, correct?

2 A. Yes.

3 Q. Are there any other -- are there radios or televisions or
4 anything like that?

5 A. TV.

6 Q. Okay. Where is the TV located, ma'am?

7 A. Above the fireplace.

8 Q. And this TV that's above the fireplace, could you describe
9 it or what kind of television that is?

10 A. It was a big flat screen. I don't know what, what kind,
11 like what 42-inch or something.

12 Q. Okay. Was it evident to you when you were there, for
13 example, watching this movie, that people in fact lived there?

14 A. Yes.

15 Q. Outside of this area where the fireplace is and this flat
16 screen TV and couch was, did you go to any other areas of the
17 home?

18 A. Brandy's room.

19 Q. Okay. In Brandy's room, was there a place where she slept?

20 A. Yes, air mattress.

21 Q. In addition to an air mattress, was there a place where her
22 clothing was kept?

23 A. In a basket.

24 Q. Okay. And in addition to that, did, did your friend, whose
25 name is Brandy, did she have anything else that was there, that

1 you knew of?

2 A. Besides her baby's toys and her son.

3 Q. Now, let's turn to the issue of Mr. Roberts. Do you know
4 who Ron Roberts is?

5 A. No.

6 Q. Okay. And if you can see the man, I'm pointing to him
7 right now. He's wearing orange and he's facing me. Have you
8 ever seen that man before?

9 A. Yeah.

10 Q. Okay. When?

11 A. When I go see her.

12 Q. Okay.

13 A. And pick her up.

14 Q. When you went to see her and pick her up, how was it that
15 you came to see Mr. Roberts, ma'am?

16 A. Huh?

17 Q. Well, I mean, you saw Mr. Roberts when you went to pick
18 up --

19 A. Yeah.

20 Q. -- your friend. And I presume that's Brandy, correct?

21 A. Yeah.

22 Q. Is that right?

23 A. Yes.

24 Q. Okay. And, and how was it on the occasions that you went
25 there that you physically saw Mr. Roberts, if you, in fact,

1 did?

2 A. When he came downstairs to say hi to us, or me.

3 Q. Okay. So, approximately, let's talk about the first
4 occasion that you went to pick up Brandy where you saw Mr.
5 Roberts. Do you know when that was, ma'am?

6 A. When I first came there?

7 Q. Yes.

8 A. No.

9 Q. Okay. Was it in 2010 or was it in 2011?

10 A. 20 -- it was February.

11 Q. Okay.

12 A. That was 2011.

13 Q. So in February of this year?

14 A. Yes.

15 Q. You went to pick up your friend Brandy and you saw Mr.
16 Roberts?

17 A. Yes.

18 Q. And when you saw him on that occasion, you said he came
19 from upstairs?

20 A. Yeah.

21 Q. Okay. Based upon that conversation and what you saw on
22 that day in February, did you understand Mr. Roberts to live
23 any place?

24 A. Huh?

25 Q. Okay. I'll rephrase the question, ma'am.

1 Was there anything that you saw on the times that you
2 went to pick up your friend Brandy that made you conclude that
3 anyone else lived there?

4 A. Oh, no.

5 Q. Okay. Were there other occasions that you saw Mr. Roberts
6 beyond this one occasion that you described in February, ma'am?

7 A. Just when I went and picked her up.

8 Q. Okay. Were there other occasions beyond that?

9 A. And when we watched a movie at her house.

10 Q. Okay. The time that you watched a movie at her home, did
11 you have occasion to see Mr. Roberts then?

12 A. Yes.

13 Q. Okay. And how did you come about seeing Mr. Roberts on
14 that occasion?

15 A. He was just walking around the kitchen.

16 Q. Okay.

17 A. Just like living normal.

18 Q. When you say living normal, did you understand that he had
19 access to the premises? I mean, he didn't --

20 A. Yes. Brandy told me that.

21 Q. I'm sorry?

22 A. Yes.

23 Q. Okay. What month was it that you watched this movie; if
24 you can recall?

25 A. Like, back in February and January.

1 MR. TANK: Okay. Your Honor, with that, I have no
2 further questions of the witness.

3 THE COURT: Okay. Some cross?

4 MS. MOHSIN: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MS. MOHSIN:

7 Q. Good morning, Ms. Will.

8 A. Good morning.

9 Q. Ms. Will, how long have you known Brandy Irwin?

10 A. Three years.

11 Q. And you knew her to live at this house that we've been
12 discussing here today?

13 A. Yes.

14 Q. How long did she live at that house?

15 A. At least three months.

16 Q. For at least three months? Did you help her move in?

17 A. No.

18 Q. Do you remember when she lived -- so three months from the
19 time that, that --

20 A. Yeah.

21 Q. -- this incident occurred, right?

22 So at least in November of 2010? How do you know she
23 lived there in at least November of 2010?

24 A. Because she told me. She called me and told me to come
25 over and see her new house.

1 Q. And did you believe that she lived there alone?

2 A. No.

3 Q. Okay. You believed that she lived --

4 A. Yes.

5 Q. -- lived there with another person, right?

6 Did you know who that other person was?

7 A. No.

8 Q. Did she tell you anything about her -- what she was allowed
9 to do in the house? In other words, did she have any
10 restrictions on where she could go or not go?

11 A. All she said was she couldn't go upstairs. That's it.

12 Q. She was not allowed on the second floor of the house; is
13 that right?

14 A. Yes.

15 Q. She had the run of the first floor of the house, but she
16 was not permitted to go to the second floor, right?

17 A. Yes.

18 Q. And Ronald Roberts told her that she couldn't go up there,
19 right?

20 A. That's what she said.

21 Q. Okay. Did she tell you Ronald Roberts lived at that house
22 with her?

23 A. Yes.

24 Q. On the day you were there, that's the third time you were
25 there?

1 A. Yes.

2 Q. Could it have been more than three times that you had
3 visited her there?

4 A. She -- when I -- I picked her up, she came outside in my
5 car and then she stayed in my house for at least a good month
6 or two.

7 Q. Okay. Let's back up. She moved into this house in
8 November of --

9 A. Yeah.

10 Q. -- 2010?

11 A. She wasn't hardly there.

12 Q. And she spent time living at your house?

13 A. Yes.

14 Q. Did she tell you why she came to your house?

15 A. No.

16 Q. And you said she spent a month living with you at your
17 house?

18 A. Yes.

19 Q. After she got the house in November 2010?

20 A. Yes.

21 Q. When was that? In December? November? January? When?

22 A. I really don't remember. I really don't remember, but I
23 know it was a while ago, like a long time ago.

24 Q. Okay. Just so we're clear, when she lived with you, was it
25 during the time that she was also living with Ronald Roberts at

1 this house?

2 A. She was pregnant with her son.

3 Q. Okay. So she did not live with you after she moved in --

4 A. No.

5 Q. -- with Ronald Roberts?

6 A. No.

7 Q. She lived with you previously?

8 A. Yes.

9 Q. All right. But she had -- and she lived there from about
10 November of 2010 until she was arrested, correct?

11 A. Yes.

12 MS. MOHSIN: Nothing further. Thank you.

13 THE COURT: I have another clarification that I
14 just -- it just occurred to me. This woman is living there
15 with an infant son, right?

16 THE WITNESS: Yes.

17 THE COURT: So why are you there at one o'clock in the
18 morning?

19 THE WITNESS: I was really supposed to pick her up.
20 She --

21 THE COURT: Why? For what reason would you pick
22 somebody up in the middle of the night who is living in a
23 boarded up house with an infant son? Were you getting her out
24 of there or rescuing her or what?

25 THE WITNESS: She just wanted to hang out.

1 THE COURT: She wanted to hang out.

2 THE WITNESS: At my house.

3 THE COURT: Sorry?

4 THE WITNESS: She wanted to go spend the night at my
5 house.

6 THE COURT: She wanted to spend the night at your
7 house.

8 THE WITNESS: Yes.

9 THE COURT: Starting at one in the morning?

10 THE WITNESS: Well, it was, it was a Friday, so.

11 THE COURT: What?

12 THE WITNESS: It was Friday. And she didn't get back
13 home until late. So she told me just come get her at midnight.

14 THE COURT: Okay.

15 THE WITNESS: I don't even know why I went.

16 THE COURT: I couldn't hear the last --

17 THE WITNESS: I said I don't even know why I went.

18 THE COURT: You don't know why you went?

19 THE WITNESS: (Shaking head.)

20 THE COURT: Okay. Any other questions?

21 MS. MOHSIN: May I, your Honor?

22 THE COURT: Well, you're on cross. Are there any
23 other direct questions on any of this, Mr. Tank or Mr. Hackett?

24 MR. TANK: I have none, your Honor.

25 THE COURT: No?

1 MR. HACKETT: I have none, your Honor.

2 THE COURT: Go ahead.

3 MS. MOHSIN: I have a few related to the question
4 raised by the Court.

5 THE COURT: Go ahead.

6 CROSS-EXAMINATION

7 BY MS. MOHSIN:

8 Q. Ms. Will, on the other occasions you picked up Brandy Irwin
9 at this house, was it also at midnight or one in the morning?

10 A. No.

11 Q. What time would you pick her up?

12 A. Like early in the afternoon, like two, three.

13 Q. Two or three in the afternoon?

14 A. Yeah.

15 Q. So this was, in fact, the only occasion that you picked her
16 up at midnight?

17 A. Yes.

18 Q. Okay. And she did not give you any reason why she wanted
19 to do it other than to hang out?

20 A. No.

21 Q. She was not -- she didn't tell you she was concerned about
22 something or had some fears?

23 A. Nope.

24 Q. On other occasions as well?

25 A. No.

1 MS. MOHSIN: Thank you.

2 THE COURT: You can step down. Thank you.

3 (Witness excused at 9:55 a.m.)

4 THE COURT: Mr. Hackett, what else?

5 MR. HACKETT: Your Honor, let me check the hallway and
6 see if any of the other witnesses have showed up.

7 (Brief pause.)

8 MR. HACKETT: Your Honor, as I had indicated, and I
9 have just spoken with the U.S. attorneys on this case, I have
10 some witnesses that were subpoenaed that are Detroit police
11 officers who apparently have not shown up and they haven't
12 contacted me at all. And I have no contact numbers for these
13 people other than the, the lines at the precinct that they work
14 on, that seem to be not working very well.

15 I did speak with Lieutenant Quarello out in the
16 hallway. And he did indicate that if he had a phone, he could
17 contact these people and have them down here. They were
18 subpoenaed and, you know, they know about this hearing and they
19 are not here.

20 I believe that Mr. Tank has another witness that will
21 be here to testify. If we can try to get a hold of these
22 officers in some way, to get them down here.

23 THE COURT: So you've got Lieutenant Quarello back
24 here again, do you?

25 MR. HACKETT: Yeah. Lieutenant Quarello was

1 subpoenaed, and he wasn't released from his subpoena when he
2 was here.

3 THE COURT: So you're going to put him on again?

4 MR. HACKETT: We very well may. We wanted to see how
5 the testimony went today.

6 THE COURT: Well, what's your proffer with respect to
7 what else you would produce?

8 MR. HACKETT: With these other officers?

9 THE COURT: Right.

10 MR. HACKETT: These other officers have been out to
11 that house on Dresden and have reports that I provided to the
12 prosecutor. And I believe they have relevant information. And
13 there's no way for me --

14 THE COURT: What would that relevant information
15 consist of?

16 MR. HACKETT: Well, from their reports -- if I may,
17 your Honor?

18 THE COURT: No. Just tell me. Just, I don't -- just
19 tell me what your proffer is. What, what relevant information
20 would any other witnesses beside those people who were there on
21 the scene provide?

22 MR. HACKETT: Well, in January, there were officers
23 that went out to this house on Dresden and investigated the
24 caller who said that there was someone squatting in the home.
25 And they did an investigation on that and talked to the people

1 that were at the home and didn't make a determination that
2 there was any squatting going on.

3 THE COURT: Okay. And that would not -- would that
4 have consisted of Lieutenant Quarello or Sergeant Woods?

5 MR. HACKETT: No. But it would have, it would have
6 been individuals that reported back to the Eastern District
7 regarding what they found when they were there.

8 There's also --

9 THE COURT: And that would be relevant to what Woods
10 and Quarello did in what way?

11 MR. HACKETT: Well, it may be relevant in the sense
12 that Woods and Quarello may, in fact, have been privy to the
13 information that these individuals took back to their precinct.

14 THE COURT: They said they were not.

15 MR. HACKETT: That may be true, but --

16 THE COURT: At least I think they did. Did you ask
17 them that?

18 MR. HACKETT: I did ask them if they'd had any other
19 contact with any other officers or Federal agents involving
20 this house.

21 THE COURT: Okay.

22 MR. HACKETT: And they indicated they had not.

23 THE COURT: Okay. So do you have some other officer
24 that says that that's not, not correct?

25 MR. HACKETT: Well, I haven't had a chance to question

1 these officers because, one, when I went to the police station,
2 they wouldn't talk to me. And, two, we subpoenaed them to be
3 here at your hearing.

4 THE COURT: So your proffer is that if you were able
5 to call a number of other witnesses, maybe you would find
6 something that's relevant?

7 MR. HACKETT: Well, we do, we do know --

8 THE COURT: And the relevance would be to call into
9 question, again, with an "if" associated in the premise, call
10 into question the recollection or the statement of Quarello and
11 West (sic) that we were just talking about; that they were not
12 privy to such earlier information about the house having been
13 investigated a month earlier, things of that sort?

14 MR. HACKETT: Well, they may have, in fact,
15 communicated to someone who could communicate to the detective
16 and Lieutenant Quarello.

17 THE COURT: It sounds attenuated to me. Do you have
18 any other information that you'd seek from anybody else?

19 MR. HACKETT: Judge, this is what my purpose was for
20 subpoenaing these officers.

21 THE COURT: Okay.

22 MR. HACKETT: They have written reports regarding the
23 house on Dresden.

24 THE COURT: Okay.

25 MR. HACKETT: They'd been out to the house and

1 investigated on prior occasions the claims that the house was
2 abandoned and that it was a, you know, there was a squatter or
3 that there was drug activity involved there.

4 THE COURT: Okay.

5 MR. HACKETT: And I'd like to follow up with some
6 questions on their, on their reports that they wrote.

7 THE COURT: Anything else?

8 MR. HACKETT: Judge, we have one other witness,
9 Brandy --

10 THE COURT: Irwin?

11 MR. HACKETT: Yeah, Brandy Irwin.

12 THE COURT: You've already called her.

13 MR. HACKETT: She's en route to the court. I
14 understand she had a flat tire and she's on her way.

15 THE COURT: So you want to recall her?

16 MR. HACKETT: Yeah. I -- she wasn't -- if you -- if I
17 recall properly, she was, she was called for the purpose of
18 dealing with standing of --

19 THE COURT: Well, the point is she's been a witness.
20 Do you want to recall her? That's all I asked.

21 MR. HACKETT: Yes. I intended on recalling her
22 because there's some information that she has, I think, is
23 relevant, Judge.

24 THE COURT: All right. And Mr. Tank has a witness?

25 MR. HACKETT: Yes, he does.

1 MR. TANK: I do, your Honor.

2 THE COURT: Why don't you go ahead.

3 (Witness is sworn.)

4 THE COURT: Have a seat.

5 MR. TANK: Your Honor, before I begin the direct
6 examination as it relates to Mr. Pappert, one of the things
7 that I wanted to disclose to the Court was that Mr. Pappert was
8 in the past represented by an individual whose name is Jeff
9 Burns, that I informed the Court of when the last hearing
10 concluded.

11 Since that point in time, or I guess before that point
12 in time, that relationship no longer exists and he's not
13 represented by counsel any longer. And so I wanted to bring to
14 the Court's attention that he was, at one point in time,
15 represented by counsel, and that he's not now.

16 It's my understanding, your Honor, that he has spoken
17 with the Government's -- some of the agents associated with the
18 Government, and that he spoke with them at some point in time
19 in the past. I have no idea when that was. And it was at that
20 point in time that he was represented by counsel.

21 THE COURT: I hear all of that. And, therefore, what?

22 MR. TANK: I was just concerned about letting the
23 Court know that. I didn't know -- I was concerned about -- and
24 Ms. Mohsin and I have just spoken about it. I don't believe
25 there will be any issues related to Fifth Amendment privilege

1 that will come up. But I wanted the Court to be aware of what
2 had transpired in the past in terms of --

3 THE COURT: I see.

4 MR. TANK: Yeah.

5 THE COURT: All right.

6 MS. MOHSIN: May I have a moment to confer with Mr.
7 Tank, briefly?

8 THE COURT: Yes.

9 (Brief pause.)

10 MR. TANK: In addition to that, your Honor, one of the
11 other things I wanted to place on the record was is that Mr.
12 Pappert, I guess there was some time in the neighborhood of
13 March of this past year, called me and set an appointment with
14 me. When he set an appointment with me, I had an initial
15 meeting with him.

16 About five to ten minutes in the meeting, I made the
17 determination that this case, or what he was coming to see me
18 about, that being that the FBI had contacted him in reference
19 to this house on Dresden, was related to a case that I had. I
20 indicated to him that there was a conflict and that I could not
21 represent him. And at that point in time, the meeting
22 discontinued and I helped him find another attorney, which was
23 Mr. Burns. In total, I probably met with him for a period of
24 somewhere between five and ten minutes, your Honor.

25 THE COURT: Okay. I understand what you've said.

1 Apparently you wish to --

2 MR. TANK: I do.

3 THE COURT: -- have the witness testify.

4 MR. TANK: I do.

5 THE COURT: Right?

6 MR. TANK: Right. And I don't wish to waste any of
7 the Court's time. I apologize if I've done so.

8 THE COURT: Is there anything that the Government
9 needs on the record or any cautions or anything of that sort
10 that you think are due, based upon everything that you know?

11 MS. MOHSIN: Judge, I think --

12 THE COURT: And about which, I might add, I know
13 absolutely nothing other than what Mr. Tank has just stated on
14 the record. So fill me in, to the extent that anything is
15 missing, as far as you're concerned.

16 MS. MOHSIN: Judge, I don't know that anything is
17 missing. We did meet with Mr. Pappert, and he initially
18 indicated that he had contacted Mr. Tank to represent him.

19 THE COURT: The gentleman sitting here apparently is
20 Mr. Pappert?

21 MS. MOHSIN: That is correct, your Honor.

22 THE COURT: Okay.

23 MS. MOHSIN: The Government did have a meeting with
24 him in which he indicated that he initially contacted Mr. Tank
25 to represent him and that he later was referred to another

1 attorney, Jeff Burns, who I believe is known to Mr. Tank, as
2 well, to represent Mr. Pappert. I don't know if there's a
3 conflict here. But I think it is appropriately raised from the
4 point of view of that prior contact, since he was already
5 representing Mr. Roberts at the time.

6 THE COURT: Okay.

7 MS. MOHSIN: And so perhaps it would be appropriate,
8 in light of the fact that Mr. Pappert is no longer represented
9 by any attorney; that he has had meetings with, or a meeting
10 with the Government regarding these matters. And so to the
11 extent that perhaps Mr. Pappert may be under the impression
12 that there's some relationship or not, I don't know. Perhaps
13 the Court could inquire to make sure that there's no conflict
14 here.

15 THE COURT: I think maybe Mr. Tank will be in a better
16 position than someone who doesn't really know about the
17 background.

18 But why don't you go ahead with that, Mr. Tank.

19 MR. TANK: I will do that.

20 THE COURT: And do whatever you think is
21 appropriate --

22 MR. TANK: I will.

23 THE COURT: -- to amplify the record. Go ahead.

24 DANIEL PAPPERT

25 called as a witness at 10:03 a.m. testified as follows:

1 DIRECT EXAMINATION

2 BY MR. TANK:

3 Q. Sir, can you state and spell your full name for the record,
4 please.

5 A. Daniel Lynn Pappert.

6 Q. Okay.

7 COURT REPORTER: Can you spell your last name, please?

8 THE WITNESS: P-A-P-P-E-R-T.

9 BY MR. TANK:

10 Q. Mr. Pappert, as we sit here right now, you were in the past
11 represented by an individual, if I'm not mistaken, named Jeff
12 Burns, correct?

13 A. Yes.

14 Q. And how was it that you came to find Mr. Burns?

15 A. Through your office.

16 Q. Okay. And so if I'm not mistaken, some time in, perhaps
17 was it March or, or April, or at some point in time in the
18 spring, you found yourself, or came to my office, correct?

19 A. Correct.

20 Q. In that meeting that took place in our office, if I'm not
21 mistaken, you came in and explained some things to me, correct?

22 A. Yes, I did.

23 Q. All right. And after you had explained why it was that you
24 were there, did I, in turn, send you someplace else? Or what
25 was stated at that point in time?

1 A. You gave me Jeff Burns' phone number.

2 Q. And did I indicate to you what the reason was for that,
3 sir?

4 A. A conflict of interest.

5 Q. Okay. All right. As we sit here right now, you understand
6 that I am not your attorney, correct?

7 A. Yup.

8 Q. And do you understand that I've never been your attorney?

9 A. Yes, I do.

10 Q. And do you understand that I've not now, nor have I ever
11 given you any legal advice except to say there was a conflict,
12 correct?

13 A. Correct.

14 MR. TANK: With that, your Honor, I'd like to proceed
15 forward with the direct exam. I think I've covered what I want
16 to.

17 THE COURT: Go ahead.

18 MR. TANK: Okay.

19 BY MR. TANK:

20 Q. Mr. Pappert, what, what is it that you do for a living,
21 sir?

22 A. Fire restoration.

23 Q. Okay. And what does a fire restoration person like
24 yourself do? What does that mean?

25 A. We rebuild burned-out houses.

1 Q. Okay. And how long have you been in this business for,
2 sir?

3 A. Since my early 20's.

4 Q. All right. And are you self-employed or do you work for
5 someone else?

6 A. I'm self-employed and I subcontract.

7 Q. All right. Is there a name or another entity, a d/b/a or
8 corporation that you also work under?

9 A. Yes.

10 Q. What is that, sir?

11 A. Dynamic Fire Restoration and Miles Building Company.

12 Q. Okay. So Dynamic Fire Restoration and Miles Building.

13 All right. Now, as a result of you, you doing this,
14 or having these companies, both Dynamic and Miles, do you have
15 employees?

16 A. Yes, I do.

17 Q. Was Mr. Roberts one of those employees?

18 A. Yes, he was.

19 Q. And for how long, sir, was Mr. Roberts one of your
20 employees?

21 A. Since probably beginning late '09, I believe.

22 Q. Okay. And so what was it that Mr. Roberts did from, until
23 late '09 until when he ceased working for you?

24 A. General labor, painting, cabinetry, tile work.

25 Q. Okay. And so what you're saying is, is that if you have a

1 fire at a home in Detroit, for example, or any place else for
2 that matter, you would come in and restore the inside of the
3 home; is that what happens?

4 A. Yes.

5 Q. What about the exterior of the home, do you do that as
6 well?

7 A. Yes, we do.

8 Q. Did there come a point in time in the latter part of the
9 year, in 2010, where you began to work at a home on Dresden?

10 A. Yes.

11 Q. In Detroit?

12 A. Yes, there was.

13 Q. Do you recall off the top of your head what the address was
14 at Dresden?

15 A. 17368, I believe.

16 Q. Okay. All right. Now, you were working on any other homes
17 in Dresden --

18 A. No.

19 Q. -- in addition?

20 Okay. Have you ever heard the address 17378?

21 A. Yes.

22 Q. Okay. What do you understand that address to be?

23 A. That's the house on Dresden, I believe.

24 Q. Okay. Now, when you get to this home, approximately what
25 month and what year is it, sir, when you commence work on this

1 home?

2 A. You have my receipts, so.

3 Q. Now, I'm going to stop you there. Do you have something
4 with you that would refresh your recollection if you looked at
5 it, in terms of knowing what the date was?

6 A. Yup.

7 Q. Okay. And just for the record, sir, what is it that you
8 have in your hand right now?

9 A. My check registry.

10 Q. Okay.

11 A. I would have to say the first dumpster we had over there
12 was September, beginning of September.

13 Q. All right. Of what year, sir?

14 A. 2010.

15 Q. All right. So in September of 2010, you have a first
16 dumpster arrive. What would that be for?

17 A. When we have to tear out all the materials on the inside.

18 Q. What does it mean, to tear out all the materials on the
19 inside? What specifically are you doing?

20 A. We tear out the insulation, drywall, carpeting, whatever is
21 on the inside of the house burned out, you know, tear the roof
22 off.

23 Q. The roof as well?

24 A. Yup.

25 Q. All right. What do you wind up with? In what condition is

1 the house after you removed all these things? What's left?

2 A. Basically it's a shell.

3 Q. Okay. And the shell would consist of what, sir?

4 A. The exterior 2 by 4's and the brick.

5 Q. And what do you do from that point in time once you got the
6 shell there? What did you do in this instance, I guess is my
7 question.

8 A. We had to pull a permit.

9 Q. All right.

10 A. Then we did the structure in the back, fix the roof.

11 Q. All right. When you say that you had to pull a permit, who
12 did you pull permits with?

13 A. City of Detroit.

14 Q. All right. And so you got permits to do what?

15 A. A rough structure.

16 Q. All right. Once this house is down to the shell, if you
17 will, what kind of work do you do internal to it?

18 A. You have to spray it, fix everything, insulate, drywall,
19 paint, get it back to liveable.

20 Q. All right. Did you do that in this instance?

21 A. Yes, we did.

22 Q. When you say get it back to liveable, what do you mean by
23 that?

24 A. You have to -- people got to be able to move back into it.

25 Q. So it has to be inhabitable?

1 A. Yes.

2 Q. All right. As you're doing these things, is Ronald Roberts
3 assisting you?

4 A. Yes, he is.

5 Q. All right. And so when you say that you put up drywall,
6 this is new drywall that's put up, correct?

7 A. Correct.

8 Q. The carpeting?

9 A. It's all new.

10 Q. All new. How about plumbing for the house?

11 A. Yeah. We re-PEX it.

12 Q. What does that mean?

13 MS. MOHSIN: Your Honor, we're going to object as to
14 the relevancy of all this testimony that's been going on for
15 some time.

16 MR. TANK: Okay. I'll --

17 MS. MOHSIN: I don't think it addresses the issue of
18 the issue here in this case.

19 MR. TANK: All right. I will move along faster, your
20 Honor.

21 THE COURT: All right, Mr. Tank.

22 BY MR. TANK:

23 Q. As it relates to this house, this house, did there come a
24 point in time where you allowed someone to stay or live in it?

25 A. Two, yes.

1 Q. Okay. Who was that, that you allowed to live inside this
2 home?

3 A. Darryl Stringer, who occupied the house on occasion.

4 Q. Okay.

5 A. And Ron had occupied it on occasion.

6 Q. When you say Ron, what do you mean by that?

7 A. Ron Roberts.

8 Q. All right. And so why is it or how is it, sir, that your
9 employees have come to live inside this home?

10 A. Well, I wouldn't call it living, but we have permission to
11 enter the home.

12 Q. Okay.

13 A. To protect it, insurance, main contractor's interest.

14 Q. What do you mean by that?

15 A. Well, because the house was broken into before, and we were
16 waiting for the bank to repossess the property.

17 Q. All right. So you're employed by who when you're doing
18 this work, sir?

19 A. National Fire Restoration.

20 Q. Now, as you're -- strike that. I apologize.

21 How is it -- could you describe the nature of the
22 permission or what it is that you tell the other man you
23 described and Mr. Roberts, in relationship to what they are
24 allowed to do and not do in the home?

25 A. We go in, do weekly checks and make sure everything is

1 okay, and the neighborhood is not breaking in and stealing
2 everything.

3 Q. All right. So as you complete these things and things are
4 done, for example, like you have electrical in or new, new
5 things that have been placed in, does that become an increasing
6 problem on a place like Dresden?

7 A. Yes, it does.

8 Q. Did you give Mr. Roberts permission to stay the night at
9 the home?

10 A. If he had to.

11 Q. Okay. And what kind of situations would he have to, sir?

12 A. I mean, I -- what do you mean, what kind of situation?

13 Q. All right. I'll withdraw the question.

14 Now, as it relates to, to the home itself, if we were
15 to go, for example, to the years or to the month of, for
16 example, say February of the year 2010, what kind of condition
17 is this home in, in February of 2010?

18 A. February 2010?

19 Q. Excuse me. Strike that. February of 2011.

20 A. It's in a liveable, habitable situation.

21 Q. All right. Would it have been up to code, for example, for
22 the --

23 A. Yes.

24 Q. -- city?

25 A. We passed all our inspections.

1 Q. All right. So there were inspectors that had come through
2 with the City of Detroit?

3 A. Yes.

4 Q. And you passed those?

5 A. Yes.

6 Q. And as it relates to, for example, March of say 2011, had
7 that changed at all?

8 A. I don't think I was there in March.

9 Q. Okay. The last that you saw the house, for example, in say
10 in February of 2011, it was livable then, correct?

11 A. Yes.

12 Q. All right. Now, one of the things that you brought with
13 you was a series of records as it relates to your business.
14 And you handed those to me today, correct?

15 A. Mh-hm.

16 Q. Okay.

17 MR. TANK: If I may, your Honor, is it permissible I
18 hand him more than one exhibit at a time?

19 THE COURT: It's desirable, as a matter of fact.

20 MR. TANK: I'll hand him all of them, your Honor. I'm
21 going to hand him, the witness, Exhibits 3 through 30.

22 MS. MOHSIN: I did have a chance to look at them.

23 MR. TANK: Okay.

24 THE COURT: Okay.

25 MR. TANK: If I may approach, your Honor?

1 THE COURT: Yes, sir.

2 BY MR. TANK:

3 Q. I'd like you to take a look at Exhibit 3. Can you describe
4 for me what that is, sir?

5 A. That's the order for the cabinets.

6 Q. I'm sorry?

7 A. The order for cabinets.

8 Q. The cabinets for where, sir?

9 A. Kitchen.

10 Q. Where?

11 A. On Dresden.

12 Q. Okay. And these receipts that you have brought and which
13 are now marked as Exhibits 3 through 30, these are receipts to
14 the home as relates to Dresden, correct?

15 A. Correct.

16 Q. And so that's the receipt as we relate to Exhibit Number 3
17 for cabinets that you put in the home, correct?

18 A. Yes, sir.

19 Q. Okay. And those were new cabinets?

20 A. Mh-hm.

21 Q. Is that -- you have to say -- answer audibly, yes or no.

22 A. Yes.

23 Q. I want to move on, if I could, to Exhibit Number 4. Could
24 you identify what Exhibit Number 4 is?

25 A. Exhibit Number 4 is shingles for Dresden.

1 Q. Okay.

2 A. Roof repair.

3 Q. In what month does that indicate that receipt is for, sir?

4 A. October.

5 Q. Okay.

6 MR. TANK: Your Honor, just as a point of direction,
7 would you prefer that I go through and admit each exhibit one
8 by one, or just go through and lay the foundation and admit
9 them at the end?

10 THE COURT: You would like to have 3 through 30
11 admitted?

12 MR. TANK: Yes.

13 THE COURT: Is there any objection to admitting 3
14 through 30 from the Government, Ms. Mohsin, other than
15 tangential relevance?

16 MS. MOHSIN: Judge, I do have an objection to it.

17 THE COURT: All right. Do you want them to go one by
18 one then or?

19 MS. MOHSIN: I don't think that they are relevant.
20 And I also have some issues related to whether or not these
21 records came from Mr. Pappert himself. I know he's testified
22 that he gave them to him, but I want to voir dire this witness
23 more specifically about these records.

24 THE COURT: Do you want to move to admit 3, for
25 example?

1 MR. TANK: Yes.

2 THE COURT: Mr. Tank?

3 MR. TANK: That will be fine. I'll move to admit 3.

4 THE COURT: The Government wants voir dire on that.

5 So I will turn the lectern over to Ms. Mohsin.

6 Go ahead.

7 VOIR DIRE

8 BY MS. MOHSIN:

9 Q. Mr. Pappert, you appear to have a file in front of you.
10 And then you just indicated that you provided a series of
11 records to Mr. Tank. Is that correct?

12 A. Yes, ma'am.

13 Q. Are the records in your file different from the records
14 that you provided to Mr. Tank this morning?

15 A. These are my check registers.

16 Q. So they are different from the records you provided to Mr.
17 Tank this morning?

18 A. I didn't give these to him.

19 Q. Are the records you provided to Mr. Tank different from
20 what's contained in that envelope?

21 A. Yes.

22 Q. Are the records that you provided to Mr. Tank a complete
23 record of all of the documents you have in connection with this
24 case?

25 A. All of them that I could find, yes, they are.

1 Q. And not including the check registers?

2 A. No, not including those.

3 Q. So other than the check registers, are there any other
4 documents in that file?

5 A. In this? Just a subpoena that you guys served me, a copy
6 of a check that I got written for Dresden Street, a draw sheet,
7 and a couple things with hourly.

8 Q. So there are other records in there that are not contained
9 in that file?

10 A. In this file? No. I mean, yes.

11 Q. I'm sorry. I'll be more specific. The file that you
12 provided to Mr. Tank, I'm trying to determine if the file that
13 you provided to Mr. Tank is a complete record of the documents
14 connected to your work on 17378 Dresden.

15 A. These are the things that are missing that I did not put
16 into that file.

17 Q. Okay. And in addition to that, in the file, are there any
18 other documents that you have or that exist related to that
19 file?

20 A. To Dresden Street, at my office I have a list of a
21 specification sheet that I was not able to get this morning
22 yet.

23 Q. And the file that you gave to Mr. Tank, that came from you?

24 A. Yes.

25 Q. From your files of both your companies, as well as you

1 personally?

2 A. Correct.

3 MS. MOHSIN: Okay. Thank you, your Honor.

4 THE COURT: Is there an objection to the receipt of
5 Number 3, as an exemplar?

6 MS. MOHSIN: Only the relevance issue. Beyond that,
7 we're satisfied as to the authenticity of the records.

8 THE COURT: I'm uncertain about the relevance as well.
9 But authenticity being reasonably satisfied, 3 will be
10 admitted.

11 And why don't you identify 4 through 30, Mr. Tank, and
12 see if those are subject to the same ruling.

13 MR. TANK: Okay.

14 (Exhibit #3 was received at 10:22 a.m.)

15 THE COURT: I would suggest that you have the -- Ms.
16 Mohsin?

17 MS. MOHSIN: To be helpful to the Court, we're
18 prepared to agree, having reviewed these records with counsel,
19 that 3 through 30 came from the file that he just testified
20 about. Other than relevance, we don't have an objection to
21 authenticity.

22 THE COURT: You move to admit 4 through 30?

23 MR. TANK: I do, your Honor.

24 THE COURT: Received.

25 (Exhibits #4-30 were received at 10:22 a.m.)

1 THE COURT: Go ahead. Next question.

2 DIRECT EXAMINATION

3 BY MR. TANK (continued):

4 Q. Now, sir, you have in your hand there, and I believe that
5 they are in order, Exhibit No. 15. Could you go to that for
6 me, please?

7 A. Mh-hmm. Sorry, yes.

8 Q. Could you pull the microphone a little closer to yourself?
9 Thank you, sir.

10 There's an indication as it relates to an organization
11 or a company called Pleasant View Windows. Can you tell me
12 what that is, sir?

13 A. That's my window manufacturer.

14 Q. All right. This window manufacturer, did you, in fact,
15 have windows placed into this home on Dresden?

16 A. Yes, I did.

17 Q. What was the reason, sir, if you can recall, they were
18 boarded up?

19 A. We do a mortgage company board-up because they kept trying
20 to break in the back windows.

21 Q. All right. And so the boards prevent what?

22 A. People to get in the house.

23 Q. All right. So is that why, for example, all of the windows
24 are boarded on the first level but they are not on the second?

25 A. Correct.

1 Q. All right. And so underneath those boards are brand new
2 windows, if I'm not mistaken?

3 A. Correct.

4 Q. All right. So as we have Dresden, for example, in February
5 of 2010, the total interior of this home is brand new, correct?

6 A. Yes, sir.

7 Q. All right. Now, as it relates to the outside of the
8 exterior, was there water that was frozen or built up on the
9 outside of the home on the back of it that you ever saw?

10 A. Not to my knowledge.

11 Q. Okay. Had you seen it, that would have been a concern to
12 you?

13 A. If I would have seen it, it might have been a concern, but
14 I don't remember seeing that.

15 Q. All right. Now, was there a point in time as it relates to
16 Mr. Roberts or anyone else where you provided written
17 permission for someone to stay inside the home?

18 A. I had written permission from people to surveillance the
19 premises.

20 Q. All right. And who would those people have been that you
21 provided the written permission for?

22 A. Darryl Stringer and Ron Roberts.

23 Q. All right. And when you say to surveil the premises, what
24 do you mean by that?

25 A. Enter the property, check it out, walk around, make sure

1 everything is still there.

2 Q. Okay. Is it a fair statement, as we sit here, that one of
3 the things that you wanted done because of the investment that
4 you had in this, is to provide at least some degree of security
5 to the inside of the home?

6 A. Correct.

7 MS. MOHSIN: Objection leading.

8 THE COURT: Agreed.

9 BY MR. TANK:

10 Q. Sir, what was the purpose, if you will, of giving Mr.
11 Roberts and this other individual that you've identified the,
12 the -- this record?

13 A. Because I, in case somebody asked them what they were doing
14 at the property, so they'd have proof that they work for my
15 company.

16 Q. Okay. Not only proof to work for your company, but
17 anything else beyond that?

18 A. Proof to surveillance the property, protect the interests.

19 Q. Okay. When you put together this document, who was this
20 document intended for? Was it for anybody else beyond Mr.
21 Roberts and this other individual?

22 A. No.

23 Q. Now, when you say to surveil the property, did you have any
24 understanding or idea how much time or how long they would be
25 inside the property, if at all?

1 A. No, I did not.

2 MR. TANK: All right. If I could just have a moment,
3 your Honor.

4 (Brief pause.)

5 MR. TANK: Your Honor, I have no further questions of
6 the witness.

7 THE COURT: Anything for you, Mr. Hackett, from the
8 defense?

9 MR. HACKETT: I have no questions at this time.

10 THE COURT: Ms. Mohsin?

11 MS. MOHSIN: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MS. MOHSIN:

14 Q. Mr. Pappert, we've met, correct?

15 A. Yes.

16 Q. In fact, we met on approximately April 13th of this year;
17 is that right?

18 A. Correct.

19 Q. You were represented by an attorney?

20 A. Yes.

21 Q. You came to the FBI's office?

22 A. Yes, I did.

23 Q. In Macomb County?

24 A. Yes.

25 Q. And you were presented with a document that was three pages

1 in length, and you signed that document. Do you remember that?

2 A. Yes, I do.

3 Q. And in that agreement, between -- wasn't that an agreement
4 between you and the Government?

5 A. Yes, ma'am.

6 Q. And you agreed to provide truthful information to the
7 Government; isn't that correct?

8 A. Yes, I did.

9 Q. And you agreed that so long as you provide truthful
10 information, those statements would not be held against you?

11 A. Correct.

12 Q. Now, during the meeting that we had with you in April of
13 this year, we asked you a series of questions about your work
14 as it was performed at the Dresden address?

15 A. Correct.

16 Q. And you made certain statements at that time?

17 A. Yes, I did.

18 Q. And you indicated to us that you had documents that were
19 relevant to the work that was performed?

20 A. Correct.

21 Q. And you agreed to provide those documents to us?

22 A. Yes, I did.

23 Q. And to date, those documents have not been provided to us,
24 despite repeated requests; isn't that correct?

25 A. Well, can I --

1 Q. It's a yes or no question, sir.

2 A. They should have been.

3 Q. When you say they should have been, you don't know that
4 they were or were not provided; is that correct?

5 A. I am not sure. I dropped them off.

6 Q. You gave them to Mr. Tank this morning; isn't that correct?

7 A. Correct. But I also dropped them to Mr. Burns at his
8 office within a week of then.

9 Q. Okay. But you provided the documents that were requested
10 by the Government in April of 2011, which you agreed to
11 provide, to Mr. Tank this morning?

12 A. Correct.

13 Q. And you indicated in your meeting with us, in April of
14 2011, that you didn't know if you had given any written
15 permission to Mr. Roberts to stay at the residence; isn't that
16 correct?

17 A. I gave a letter, written permission, stating that if
18 someone was outside the property, they would work for my
19 company. And we were doing -- protecting the bank's interests.

20 Q. But you didn't provide any letter to the Government,
21 despite repeated requests for any letter or written permission
22 to the Government, did you?

23 A. I cannot find that letter.

24 Q. In fact, you couldn't recall if you had ever even drafted
25 one; isn't that correct?

1 A. No. I --

2 Q. So you --

3 A. I don't think so.

4 Q. No, it's not correct that you couldn't recall?

5 A. I know I wrote a letter for Ron and Darryl to get the --
6 for the property.

7 Q. You know that today. But in April of 2011, did you or did
8 you not tell the Government that you could not recall whether
9 such a letter was ever drafted or even existed?

10 A. I'm almost positive, almost positive. I'm almost positive.
11 But there was another letter that --

12 Q. You're almost positive what, sir?

13 A. -- about, too.

14 Q. I'm sorry. You're almost positive about what? I'm not
15 sure I understood your answer.

16 A. I'm almost positive there was a letter written. I could
17 not find the copy I'd written, but there was a letter written
18 stating that people could get into Dresden to remove personal
19 effects, somewhere along that line.

20 Q. You're almost positive today; is that correct?

21 A. Yes.

22 Q. But at the time, you were not sure. Are you saying that
23 that statement to us, to the FBI, was not correct?

24 A. That's not what I'm saying.

25 Q. You know Ronald Roberts; is that correct?

1 A. Correct.

2 Q. You know him to be a member of the Devil's Disciples
3 motorcycle gang?

4 A. Correct.

5 Q. You've had opportunities to party with Ronald Roberts as a
6 member of the Devil's Disciples motorcycle gang?

7 A. We've hung out.

8 Q. You've been to club events, "club" meaning members of
9 Devil's Disciples who have parties and events on behalf of the
10 motorcycle club, you've been to those events?

11 A. Yes, I have.

12 Q. You've met the national president, right?

13 A. Who is it?

14 Q. You've been to their clubhouses?

15 A. I've been to one, yes.

16 Q. Okay. And now you're, you're stating that there was
17 permission for Mr. Roberts to surveil the property. Is that
18 your testimony here today, sir?

19 A. I had written a letter for a reason, because there has been
20 an opportunity before this that when people were walking out of
21 the address, the police had pulled up and asked them what we
22 were doing there.

23 Q. So you wrote a letter after police had already been to the
24 Dresden address seeking a determination whether Mr. Roberts has
25 a right to be there? In other words, you wrote a letter after

1 police had already been to the property. Is that your
2 testimony here today?

3 A. Yes.

4 Q. And you provided that letter to Ronald Roberts; is that
5 your testimony here today, sir?

6 A. I had given a letter to someone. Yes, I have.

7 Q. You don't recall who you gave this letter to?

8 A. I could have swore I gave it to Ron.

9 Q. So your testimony is that you gave Ronald Roberts a letter
10 giving him permission to be at the premises after the police
11 had already been there?

12 A. One, yeah, one prior event, yes.

13 Q. Okay. But you do not have a copy of that letter, correct?

14 A. No, I don't. And I asked the office for it and they can't
15 find it either.

16 Q. Now, Chuck Norris of National Fire Restoration, the company
17 that you were subcontracting for, that's your uncle, sir?

18 A. Yes.

19 Q. Okay. And that's who you subcontract for, correct?

20 A. Correct.

21 Q. And the property in this case on Dresden, all work was
22 completed by November 10th of 2010; isn't that correct?

23 A. Not November 10th.

24 Q. What was the date that the work was completed on that
25 property?

1 A. Some time in December, because I couldn't get my last pay
2 until December 31st.

3 Q. So as far as you were concerned, as of December 31st, you
4 were not owed any further money by anyone in connection with
5 your work being performed at this property?

6 A. No, I was not.

7 Q. So you had no further interest in this property after
8 December 31st; is that correct?

9 A. Financially, no. But the contractor asked me to make sure
10 that the house stays in its condition until either Mr. Burrage
11 or the mortgage company came up and took repossession of the
12 home.

13 Q. So Mr. Burrage, meaning Tony Burrage, the actual owner of
14 the property?

15 A. Correct. He lost that in foreclosure.

16 Q. And you know that for a fact?

17 A. That's what I was told in the office.

18 Q. Okay. And the person who asked you was your uncle, Chuck
19 Norris?

20 A. Yes.

21 MS. MOHSIN: Nothing further, your Honor.

22 THE COURT: Any redirect, Mr. Tank?

23 MR. HACKETT: Yeah, I --

24 THE COURT: No. It would be Mr. Tank for redirect.

25 You didn't have any direct, Mr. Hackett.

REDIRECT EXAMINATION

1
2 BY MR. TANK:

3 Q. Sir, this, this prior occasion that you talked about on
4 cross-examination of the police arriving out on the property
5 that precipitated you writing this letter, do you recall when
6 that had taken place, what month or year?

7 A. It had to be in January some time.

8 Q. Okay. January of what year, sir?

9 A. 2011.

10 Q. 2011.

11 A. Mh-hm.

12 Q. All right. You have to say yes and you have to answer
13 audibly.

14 A. Yes.

15 Q. Now, you also, on cross-examination, you made reference to
16 not only the first letter but a secondary letter. What was
17 that secondary letter that you referred to?

18 A. The secondary letter was so people could get into the house
19 and gain their personal effects. Darryl had a blowup mattress
20 or something there, and a radio that he wanted.

21 Q. Okay. When was that, sir?

22 A. I can't even recall.

23 Q. Okay. All right. Was it -- can you recall if it was
24 before or after March of the year 2011?

25 A. I believe it was after March, after everybody got arrested

1 outside of there.

2 Q. All right. And so the secondary letter you provided so
3 that people could go in and obtain the household items that
4 were theirs?

5 A. Correct.

6 Q. The other question that I had, is that all of the work that
7 you had done on this home was complete by when, sir?

8 A. The end of December.

9 Q. All right. And so it's complete in the end of December,
10 you're done with all the work, right?

11 A. Correct.

12 Q. Why do you stay?

13 A. The contractor had asked us, could I make sure, do checks
14 on the property so the stuff would stay in there, because
15 they've already broken into it twice before that.

16 Q. Were you being paid to do that?

17 A. No.

18 Q. If you weren't being paid to do it, why would you do
19 something like that, sir?

20 A. Well, when your boss asks to you do something, and you tell
21 him no - I'd like to continue to work.

22 Q. When you say you would like to continue to work, so you
23 were concerned about receiving future business from these
24 people that had sent it to you?

25 A. Correct.

1 Q. And so because you were concerned about the future
2 business, you continued to provide security, your people to
3 watch the house from prevent it from being broken into?

4 MS. MOHSIN: Objection. Leading.

5 THE COURT: Overruled.

6 BY MR. TANK:

7 Q. Did you do that?

8 A. Yes.

9 MR. TANK: With that, I have nothing further, your
10 Honor. Thank you.

11 THE COURT: So, Mr. Pappert, the permission that you
12 wrote, whether it was before or after this February event, was
13 apparently intended to permit mister -- these two individuals,
14 Mr. Roberts and Mr. Stringer to do what you called surveilling
15 the property, which would be observing the property in order to
16 apparently periodically make sure the doors were locked and
17 things were secure. Is that, is that the substance of it?

18 THE WITNESS: Correct.

19 THE COURT: I do not understand you to be saying that
20 whatever permission you wrote would have been permission to
21 allow Mr. Roberts to set up housekeeping and to actually use
22 the house as though it was his and to live in it. Am I correct
23 about that? Or did you intend to take this order from your
24 boss, to grant permission for Mr. Roberts, to actually set up a
25 household in this, in this house?

1 THE WITNESS: I'm confused on that question. Can you
2 repeat that?

3 THE COURT: Did your surveillance permission --

4 THE WITNESS: Mh-hm.

5 THE COURT: -- as far as you are concerned, include
6 permission for Roberts and Stringer to set up housekeeping in
7 the building?

8 THE WITNESS: Well, Darryl had a blowup mattress and a
9 radio over there, so.

10 THE COURT: And the answer to my question is what?

11 THE WITNESS: Yes.

12 THE COURT: You intended to permit, to permit Mr.
13 Roberts to set up housekeeping in the house and to actually
14 live there; that was your intention?

15 THE WITNESS: No, not to actually live there. But --

16 THE COURT: So the answer to the question would be no?

17 THE WITNESS: It would have been no. But you're kind
18 of confusing me by saying household items. And I just said
19 Darryl had a blowup mattress and stuff over there.

20 THE COURT: Yeah. When you said that, you were not --
21 my, as the saying goes, my question may have been not been
22 responsive to your answer.

23 But let me ask this. Would your permission to Mr.
24 Roberts, whatever it encompassed, would it have been intended
25 by you to permit Mr. Roberts to extend an invitation to other

1 people to live there, such as a woman and an infant child?

2 THE WITNESS: Yes.

3 THE COURT: And personal possessions?

4 THE WITNESS: Yes.

5 THE COURT: Yes? You intended to permit him to permit
6 others. Would you have permitted him -- intended to permit him
7 to collect rent from these other individuals?

8 THE WITNESS: Not that I know of. I mean --

9 THE COURT: Well, you're the one that would know. I'm
10 asking what your intention was.

11 Was it your intention, your idea, your concept to
12 permit him to, for example, collect rent from individuals?

13 THE WITNESS: No. I wouldn't have gave permission to
14 collect rent.

15 THE COURT: But you would have -- so you would have
16 intended to allow him to grant entry to other people to live
17 there rent-free, right?

18 THE WITNESS: If need be, yes.

19 THE COURT: So yes?

20 THE WITNESS: Yes.

21 THE COURT: Okay. And was all of that done with the
22 knowledge and the permission of your uncle, who you referred to
23 as your boss?

24 THE WITNESS: Chuck.

25 THE COURT: The general contractor?

1 THE WITNESS: Well, he's the one that asked us to do
2 it.

3 THE COURT: To do it. And would the "it" be giving
4 people permission to live there?

5 THE WITNESS: Gosh, I don't know if he knew anybody
6 was there or not. He just asked us to go through and check it
7 out.

8 THE COURT: Okay. Mr. Tank, any other questions along
9 the lines of what the Court has asked?

10 MR. TANK: Briefly.

11 FURTHER EXAMINATION

12 BY MR. TANK:

13 Q. Sir, this area that Dresden is on, is it a nice
14 neighborhood or is it a tough neighborhood? What kind of area
15 is it?

16 A. It's a pretty tough neighborhood.

17 Q. Okay. And so if you were to have people surveil the house,
18 as you put it, was it your expectation that they would be there
19 frequently or infrequently?

20 A. Frequently.

21 Q. Why frequently?

22 A. Because the neighborhood is pretty tough.

23 Q. Okay. As it relates to the conversations that you had with
24 your uncle, did you understand that, that you have people there
25 surveilling the property, as you put it, frequently or

1 infrequently based upon the kind of area it is?

2 A. Frequently.

3 Q. Okay. Frequently, for example, as we talk about these air
4 mattresses, in an overnight capacity, correct?

5 A. Correct.

6 MR. TANK: With that, I have nothing further.

7 THE COURT: Ms. Mohsin, any additional questions?

8 MS. MOHSIN: May I have a moment, please, your Honor?

9 THE COURT: Yes.

10 RECROSS-EXAMINATION

11 BY MS. MOHSIN:

12 Q. Mr. Pappert, would it be fair to say that you knew Ronald
13 Roberts was living in the property, but you knew he didn't have
14 the right to do so and you certainly didn't give him the right
15 to live there?

16 MR. TANK: Your Honor, I'm going to object to the
17 question as compound.

18 THE COURT: Well, perhaps.

19 BY MS. MOHSIN:

20 Q. You knew Ronald Roberts was living there; isn't that right?

21 A. That's not his residence. Like I said, people were coming
22 there surveilling the property.

23 Q. Sir, here's my question. Did you know -- withdrawn.

24 You knew that Mr. Roberts was living at 17378 Dresden,
25 didn't you?

1 A. No.

2 Q. You did not know that?

3 A. No. I know he was there frequent. Darryl was there
4 frequent.

5 Q. You've been inside that property, sir, haven't you?

6 A. Yes, I have.

7 Q. You were inside that property in January of 2011, weren't
8 you?

9 A. Yes, I was.

10 Q. After work had been completed?

11 A. Yes.

12 Q. And February, as well?

13 A. Yes.

14 Q. And you, you've seen the sofa that was in there, correct?

15 A. Correct.

16 Q. The TV that was in there, correct?

17 A. Correct.

18 Q. And the other personal effects, correct?

19 A. Kitchen table, correct.

20 Q. You didn't put those things in that house, did you?

21 A. No, I did not.

22 Q. You knew that Ronald Roberts was at the house living and
23 using those things during that period of time; isn't that
24 correct?

25 A. I can say somebody was living in there using those things,

1 yes.

2 Q. Okay. You knew Brandy Irwin, a female with an infant
3 child, was living at that address; isn't that correct?

4 A. I don't know what her name is, but there was a girl in
5 there with a child. Yes.

6 Q. But you don't know who she was?

7 A. I've never got her name, no.

8 Q. And when you told the FBI in March -- in April of 2011,
9 that you knew Ronald Roberts was living at that house, but you
10 didn't give him permission to do that, was that a lie?

11 A. No. I knew the girl was living at the house because she
12 was homeless with a baby.

13 Q. When you told the FBI in February of 2011 that you knew
14 Ronald Roberts was living in that house, was that a lie?

15 A. I knew he stayed there a couple nights, yes.

16 Q. But you didn't have the authority to allow him to do so;
17 isn't that correct?

18 A. I got the authority from the office to have someone in the
19 house.

20 Q. You did not have the authority to allow someone to live
21 inside the property, sir, did you?

22 A. I got the authority from the office.

23 Q. For someone to live inside of this house?

24 A. Chuck wanted people to stay in the house so it didn't get
25 ripped off.

1 Q. You just testified on direct examination that you don't
2 know that Chuck wanted that; he just wanted it surveilled.

3 A. I did not -- you're trying to tell me I didn't have
4 permission, but I was doing what I was asked by Chuck.

5 Q. You, you know who Tony Burrage is, correct?

6 A. Burrage, I met him. I think I met him once or twice.

7 Q. The owner of the property?

8 A. Correct. But he was lost in the foreclosure.

9 Q. Well, his name is still on the deed, correct?

10 A. I couldn't tell you.

11 Q. When you pulled an electrical permit on December, I think
12 it was 18th of 2010, it was in his name, correct?

13 A. He was still the owner at the time, yes.

14 Q. So as far as you knew, Tony Burrage didn't give anyone
15 permission to live in that property?

16 A. I was doing what I was asked to do by the contractor.

17 MS. MOHSIN: Nothing further, your Honor.

18 THE COURT: The witness may step down.

19 THE WITNESS: What do I do with these?

20 THE COURT: You ask Mr. Tank.

21 (Witness excused at 10:43 a.m.)

22 THE COURT: And? Well, you deal with the witness here
23 and your various exhibits.

24 And, Mr. Tank, any other witnesses?

25 MR. TANK: Your Honor, I have no further witness.

1 THE COURT: Okay. Mr. Hackett, any further witnesses?

2 MR. HACKETT: As far as I know, Judge, none of the
3 other witnesses have shown up yet.

4 THE COURT: You said that Lieutenant Quarello was out
5 in the hallway. You said you wanted to call him. I'm not
6 directing you to, but I want to know why you wanted him back
7 today if you're not going to call him, for example.

8 MR. HACKETT: Well, I expected other -- excuse me,
9 Judge. Let me see if there's someone out here, shown up.

10 (Brief pause.)

11 MR. HACKETT: As I indicated, Judge, none of the other
12 witnesses that were subpoenaed have shown up this morning.

13 THE COURT: So what is your desire?

14 MR. HACKETT: Pardon?

15 THE COURT: What is your desire?

16 MR. HACKETT: Judge, I would, I would like to have
17 these witnesses brought here to testify. That's why I
18 subpoenaed them in the first place. Most of these are police
19 officers who knew of this hearing and simply didn't show up. I
20 would ask for a continuance, Judge.

21 THE COURT: And the names that you're focusing on are
22 what, so the record is clear, please?

23 MR. HACKETT: Well, I have Sergeant David Meadows,
24 Police Officer Shawnee Robbins, Police Officer Vanessa Burke.
25 Police Officer Sean Smelter, Police Officer Charles Howard.

1 For the record, Lieutenant Quarello and Danny Woods
2 are both in the hallway. And Brandon Shortbridge, Police
3 Officer Brandon Shortbridge as well.

4 THE COURT: And your proffer as to Meadows, Robbins,
5 Burke, Smelter, Howard and Shortbridge is that they would
6 testify that, on one occasion or another, they had been at the
7 property in earlier months?

8 MR. HACKETT: That is correct. And regarding the
9 allegations that the house was abandoned.

10 Also, two of the officers, I believe, assisted the
11 Officer Woods and Detective Quarello in the arrest. And they
12 were subpoenaed as well.

13 THE COURT: And what would your proffer be about any
14 relevant testimony those individuals would offer?

15 MR. HACKETT: Well, for one of the, I believe it was
16 Officer Woods testified that he didn't -- he indicated that it
17 was another officer that found the alleged weapon in the trunk
18 of the car that has allegedly been attributed to my client. He
19 did indicate that he didn't know who found the weapon. And
20 there is no report in any of the discovery that I've received
21 to indicate who that person was. I was hoping that, that some
22 of the other officers that were on the scene at that time could
23 shed some light as to that, and how it came to be.

24 THE COURT: Why would that be relevant to a motion to
25 suppress, based upon the issues you've raised?

1 MR. HACKETT: Well, if I, if I recall, Officer Woods's
2 testimony is that, you know, he didn't actually see the weapon
3 be recovered from the trunk of the, allegedly, from the trunk
4 of the vehicle.

5 THE COURT: Actually, I think he did. I think he said
6 that some -- that an officer lifted the trunk and called out to
7 him saying come over here, you need to see this. And he went
8 over there and he saw it.

9 MR. HACKETT: Well, I, I understand that that's what
10 Officer Woods testified to. He also testified to some other
11 things that --

12 THE COURT: Well, that's different from what you just
13 proffered he said.

14 MR. HACKETT: I understand, Judge. These other
15 officers, I believe, have relevant information. And unless I
16 can talk to --

17 THE COURT: Relevant -- what point would you seek to
18 prove that would be relevant to the issues raised in the motion
19 to suppress by the testimony of additional officers that were
20 on the scene? Either who were on the scene at the time of the
21 February 12th encounter or had been there earlier? How would
22 it inform the Court with respect to making a determination as
23 to the legitimacy of the things that Woods and Quarello did?

24 MR. HACKETT: Your Honor, at this point, since their
25 reports are kind of vague, I can't indicate from the reports,

1 and the lack of reports that are not here, what they will
2 testify to. Okay. They haven't chose to talk to me about
3 these incidents, as well.

4 THE COURT: Okay. All right. Ms. Mohsin, what's the
5 Government's position on this discussion and suggestion for a
6 continuance and --

7 MS. MOHSIN: Judge, I don't think a continuance --

8 THE COURT: -- time for six additional police officer
9 witnesses to be brought in for testimony about things that are
10 similar to what Mr. Hackett was just speaking of? Go ahead.

11 MS. MOHSIN: First and foremost, your Honor, my
12 understanding is that on the last date, witnesses were
13 sequestered. To the extent that there were officers in the
14 hallway, I don't know that they are aware of this date. I just
15 put that on the record so the Court is aware of that. I know
16 counsel has indicated he has been unable to contact them. I
17 didn't see him speaking to them in the hallway, and I was out
18 there with them after the hearing.

19 Secondly, your Honor, these witnesses, to the extent
20 that there is any relevance to some event that transpired in
21 weeks prior to the arrest in this case, we submit is not
22 relevant to the issues here as it relates to the two officers
23 who observed the, the abandoned house and the individuals, and
24 the events that unfolded.

25 And this defendant, Mr. Sutherland, doesn't have any

1 expectation of privacy in the home, has not alleged any. And
2 to the extent there may be some collateral issue of whether
3 officers provided any permission to Mr. Roberts, and we
4 certainly don't concede or, or agree that that occurred. But
5 to the extent that that's the issue that's being raised, I
6 don't see what relevance that would have to this defendant at
7 all.

8 So I think, your Honor, that those witnesses are not
9 necessary; that the issues have been fully presented to the
10 Court; and that we are prepared to argue our position at the
11 conclusion of this hearing.

12 Thank you.

13 THE COURT: I agree. A request for continuance and
14 these additional witnesses, opportunity to bring these
15 additional witnesses in, to perhaps discover that something may
16 be of some significance, there's been no case made sufficiently
17 to delay the hearing any further.

18 So you said you do have Quarello here. Earlier you
19 told Mr. Hackett that perhaps you would want to call him back
20 at that time. If there's anything more that he hasn't said
21 that you think needs to be said, do you want him back on the
22 stand or shall -- or not?

23 MR. HACKETT: No. At this time, I don't, I don't have
24 any additional questions.

25 THE COURT: Well, this is the time.

1 MR. HACKETT: I understand. I don't have any
2 additional questions for Lieutenant Quarello.

3 THE COURT: Okay. What about Woods?

4 MR. HACKETT: And, and Officer Woods, none.

5 THE COURT: Mr. Tank, likewise?

6 MR. TANK: Likewise, your Honor.

7 THE COURT: All right. Those individuals can be free
8 to go.

9 Is there anything else to be presented? Any
10 documents? Any other testimony, witnesses? No statements from
11 the defendants, I presume. Nothing else to be presented for
12 you, Mr. Hackett?

13 MR. HACKETT: Judge, at this time, no other witnesses
14 have appeared.

15 THE COURT: And it is at this time that we are focused
16 upon. Is there anything else to be presented?

17 MR. HACKETT: No, there is not, Judge.

18 THE COURT: All right. And, Mr. Tank, anything else
19 to be presented for your client?

20 MR. TANK: Your Honor, I have nothing further.

21 THE COURT: Nothing further for the Government?

22 MS. MOHSIN: Nothing further for the Government.

23 THE COURT: All right. I'll consider the evidence
24 concluded.

25 I also want to alert counsel that I can take judicial

1 notice of the Detroit City Ordinance, Section 38-4-1, which is
2 entitled Trespassing in Vacant Buildings, and which says that
3 it shall be unlawful for any person, except an officer,
4 employee or contractual agent of a government agency in the
5 performance of a public duty to enter a vacant building or the
6 property it is on without the express written authorization of
7 the property owner, lessee, agent or trustee thereof. That's
8 the ordinance that has been referred to throughout the
9 proceedings here.

10 I also take notice of the Code of Ordinances, Part 3,
11 City Code Building Regulations, property maintenance
12 requirements, and specifically part IV, lighting and
13 ventilation requirements, which sets forth minimum conditions
14 and standards for light, ventilation and space for occupying a
15 building or structure.

16 Among other, among other things, Section 9-1-374 says
17 that all habitable spaces shall have at least one window of
18 approved size that faces directly to the outdoors or to a
19 court. The minimum total glazed area for every habitable space
20 shall be 8 percent of the floor area of such room. It says
21 other things as well, but that's salient.

22 Also, Section 9-1-377 says all habitable spaces shall
23 have at least one openable window. The total openable area of
24 the window in every room shall be equal to at least 45 percent
25 of the minimum glazed area required in section 9-1-374. And it

1 says other things as well, but that's the salient portion.

2 Finally, Section 9-1-405 of the Code entitled
3 Emergency Escape Openings, it says this:

4 In sleeping areas, at least one window shall be
5 operational and accessible from inside the room without the use
6 of keys or tools to provide for emergency escape and rescue.
7 And again, it goes on with other information as well. But
8 that's the salient portion of those code provisions, some of
9 which were talked about, or were implicated in earlier
10 testimony when the police officers were on the stand.

11 So your motion then, with respect to the search of
12 your client, Mr. Hackett, do you want to argue or sum up in
13 terms of the evidence presented and the implications with
14 respect to the matters that are before the Court?

15 MR. HACKETT: Your Honor, if I could suggest that -- I
16 know we've ordered a transcript of the hearing that took place
17 last week. It was quite lengthy -- lengthy. Excuse me. It
18 was rather long. And we would like -- I would ask the Court to
19 allow me to get a copy of the transcript and to brief the
20 issues as I believe they arose in the, in the hearing prior to
21 the Court making a ruling on this issue.

22 THE COURT: I'd rather just have it discussed,
23 frankly. I mean, you've already briefed it. You've set forth
24 the motion. The law is clear. It seems to me the law is clear
25 in this area certainly with respect to street-side encounters.

1 The officers testified plainly with photographic evidence
2 submitted as to what they saw regarding the house and its
3 condition, its apparent condition. You can't just sum it up
4 based on what you've heard here?

5 MR. HACKETT: Well, Judge, I heard quite a bit of
6 different testimony coming from both police officers. And I
7 would like the opportunity to review their testimony as it
8 relates to the issues that have been raised in this case. I
9 would like to be able to brief the issue as it relates to this,
10 these -- as it relates to the search of my client.

11 THE COURT: The brief is going to consist of *Terry vs.*
12 *Ohio* I think, the citation to that case and other cases that
13 followed and interpreted it in the Sixth Circuit. The question
14 is whether the officers had a -- it boils down to it whether
15 they had a reasonable basis to do what they did, to be in a
16 position to see what they saw.

17 MR. HACKETT: That's correct.

18 THE COURT: It's not that complicated.

19 MR. HACKETT: I understand the issue, Judge. I just
20 would like to have an opportunity to review the transcripts and
21 the testimony.

22 THE COURT: Okay.

23 MR. HACKETT: Because I believe they were inconsistent
24 with each other.

25 THE COURT: I have your position.

1 Mr. Tank, do you have any other thoughts or are you
2 ready to talk about --

3 MR. TANK: Yeah, I would as well. And the reason that
4 I would like to do so, especially as it relates to Mr.
5 Pappert's testimony and some of the testimony we've had from
6 others, is the Court has taken judicial notice of a series of
7 local ordinances passed by the City of Detroit. And I think
8 that a lot of the issues that the Court has described have been
9 dealt with as it relates to the witnesses that have testified.
10 And I know that has an implication as it relates to the motions
11 we've filed.

12 So I would like an opportunity to look at the
13 transcript and to compare it to the relevant ordinances that
14 the Court has talked about as it relates to those arguments. I
15 don't anticipate as, your Honor, as we sit here I would submit
16 anything lengthy or that would take an extended amount of time.

17 THE COURT: Here's the implication. Let me just be
18 plain about these ordinances. They were implicated in the
19 first round of testimony. The officers said they encountered a
20 house that looked like it was unoccupied and boarded up. And
21 indeed, the photographs show a house that the first floor of
22 which is boarded up and could be interpreted as unoccupied. In
23 fact, the Detroit City Ordinance makes it illegal or at least
24 out of compliance with code for a space to be occupied without
25 an opening window, without an operable window that can be

1 operated from the inside. The point is it's not legitimate to
2 live in a house with boarded-up windows under the code. That's
3 just a general statement that I glean from the ordinance that I
4 -- ordinances that I cited.

5 That's not a surprising proposition. It's entirely
6 consistent with one's intuition. And, it is entirely
7 consistent with a conclusion that a reasonable officer upon
8 encountering a building that is largely boarded up, but from
9 which there are -- there is heard the sound of a voice or
10 voices and a light in an upstairs window, as the officers said
11 they observed, it has the appearance of somebody being in a
12 house that ought not be occupied. And the officers then, as
13 they said, proceeded from there. That's the only point.
14 Again, it's not a complicated proposition.

15 So, in any event, what do you think about an adjourned
16 date, Ms. Mohsin, for argument on these, on these motions?

17 MS. MOHSIN: Your Honor, I don't think it's necessary.
18 We took testimony from two police officers over ten days ago,
19 if I'm not mistaken, or close to ten days ago. I think we
20 provided them with police reports, with FBI reports of
21 interviews of these officers.

22 My recollection is that they were entirely consistent,
23 both with the reports and with each other. I know that's a
24 matter for argument. But certainly with the testimony of just
25 a handful of witnesses, any further delay in this case, I

1 think, is really unnecessary and unwarranted.

2 Perhaps if the Court was inclined to indulge the
3 defense maybe a short recess so they could collect their
4 thoughts may be in order. But short of that, your Honor, I
5 don't think it's necessary.

6 THE COURT: Let's come back at 11:45. That will be 45
7 minutes to assemble your thoughts, Counsel. And I'll take
8 whatever comments you have on the motions at that time.
9 Defendants will be brought back at or near 11:35, please.
10 We'll recess.

11 THE CLERK: All rise. Court is now in recess.

12 (Recess taken at 11:00 a.m. until 11:50 a.m.)

13 THE CLERK: All rise. Court is back in session. You
14 may be seated.

15 THE COURT: All right. Counsel, your motion and your
16 argument, Mr. Hackett. Proceed.

17 MR. HACKETT: Thank you, Judge.

18 It's undisputed that the searches in this, in this
19 case were done without a warrant. And as it relates to my
20 client, *Terry vs. Ohio* is the applicable standard.

21 And in looking at the totality of the circumstances
22 and the reasonableness of the search as it relates to Mr.
23 Sutherland, we would submit that all that was known to the
24 officers at the time prior to encountering my client was that
25 they had seen a house with boards on some of the windows. They

1 had spoken to a young lady prior to stopping at that house.
2 And the young lady indicated that she was waiting for a friend
3 and that they had apparently told her that it probably wasn't a
4 good idea to sit on the street and they left.

5 Officers -- or Lieutenant Quarello and Officer Woods
6 then returned to the area of the home on Dresden Street. They
7 indicated that what they observed was footprints in the snow
8 leading up to the house; that they saw one vehicle parked in
9 the driveway, which was lawfully parked; and that prior to that
10 observation, they had absolutely no indication that there was
11 any sort of illegal or unlawful activity taking place at the
12 house.

13 Upon making these observations, Officer Woods and
14 Lieutenant Quarello made a decision to investigate further,
15 apparently. Officer Woods indicated that they walked up to the
16 house, and both of them hopped the fence in the back along the
17 north side of the street or towards the north side of the
18 property and went into the backyard and looked around.

19 Lieutenant Quarello indicated that they walked across
20 the front of the house and took up a position towards the
21 backyard towards the southeast corner of the home. They
22 observed ice that had formed on the back of the house and
23 observed lights on inside the home, not flashlights, but
24 regular lights. And once again, no unlawful activity.

25 They remained in the backyard for a period of time,

1 it's kind of unclear, and they saw a young lady walk up to the
2 front of the home, which is the young lady whom they had
3 previously talked to. After that, after seeing her walk up to
4 the home, they didn't see her walk into the home, but
5 individuals, they heard individuals come out of the home. And
6 this is when they had contact with my client, Mr. Sutherland
7 and Mr. Roberts.

8 According to Officer Woods, when the two defendants
9 came out of the home, they were confronted by Officer Woods and
10 Detective Quarello and were ordered to come around the car and
11 place their hands on the roof of the vehicle. Lieutenant
12 Quarello had a different take on things. He indicated that
13 they waited in the darkness towards the back of the home for a
14 few minutes and then made their presence known.

15 Both of these officers had one thing in common:
16 Neither one of them could articulate any sort of unlawful
17 activity or a reasonable suspicion that my client, Mr.
18 Sutherland, was involved in any unlawful activity. They
19 continued to question my client, and in fact, ordered him to
20 place his keys on the roof of his vehicle that was lawfully
21 parked in the driveway. And at that point, my client, not
22 feeling he was free to leave, complied with the officers. And
23 the officer indicates he allegedly saw a handgun in my client's
24 belt.

25 The actions of the officers in this situation, being

1 that it was one o'clock in the morning, it was dark, their
2 actions were, in my eyes, a bit unreasonable. Either jumping
3 through yards or staying in the shadows in the backs of -- in
4 the backyards of homes in the middle of the night, without
5 backup, without announcing their presence, seems to me to be a
6 bit unreasonable.

7 And we believe that based on what the officers knew at
8 the time, they had no reason or no justification for stopping
9 and seizing my client as he exited the home. They had no
10 indication that there was any unlawful activity. In fact,
11 when, when Mr. Sutherland and Mr. Roberts exited the home and
12 they were asked what they were doing there, Mr. Roberts
13 indicated that, you know, he had permission from the building
14 company that he worked for to be on the premises.

15 And the police officers indicated, they testified that
16 they, in fact, had nothing or no evidence or no facts known to
17 them that would contradict the fact that Mr. Roberts lived in
18 the home and that they were lawfully on the premises.

19 And finally, as it relates to the officer's indication
20 that he saw the gun in plain view on my client's person, one of
21 the prerequisites to that is that the police officers must be
22 lawfully on the premises in which they make that observation.

23 From the facts that were adduced at this hearing, I
24 don't believe that the officers were lawfully on the premises.
25 And that is *U.S. vs. Berenguer*, 562 F2d 206. And for all those

1 reasons, Judge, we believe that the weapon should be
2 suppressed.

3 The vehicle, the four-door sedan that was attributed
4 to my client was lawfully parked in the driveway. And as such,
5 the officers could have, if they would have gotten a warrant at
6 the time that they searched it, they could have easily gotten a
7 warrant and it didn't need to be towed. And for all those
8 reasons, Judge, we would like you to suppress the evidence.

9 THE COURT: Okay, Mr. Hackett.

10 MR. HACKETT: Thank you.

11 THE COURT: Mr. Tank, with respect to your client?

12 MR. TANK: Yes, your Honor. Your Honor, I'll be
13 brief. Obviously, as it relates to the search and the seizures
14 that took place, my client's position differently.

15 What I would simply point out, your Honor, I think
16 that one of most compelling issues when we begin to talk about
17 these things is that I understand that the officers have
18 articulated what they believed the house looked like on the
19 night in question. And I don't think there can be any issue,
20 by virtue of what everyone has testified to, we can all agree
21 that the windows were, in fact, boarded up on the outside for
22 on at least the lower level.

23 And from that, there was -- it was nighttime. And we
24 know a little bit about the lighting in terms of what was
25 there. And there were -- I guess we can argue about what the

1 conclusions are and what the facts are. But thereafter, at
2 least at some point in time after the *Terry* stops that
3 transpire outside, we run into a situation where police
4 officers make entry into the home itself. And there doesn't
5 seem to be much from a contravention with respect to the
6 testimony that's there.

7 We've heard about a building that's relatively new,
8 that's been originally drywall, that has carpeting, but also
9 has household fixtures in the form of flat screen televisions,
10 and the like.

11 When the Government makes the seizure as it relates to
12 my client, it's not on the first level of that home in terms of
13 them coming in from a plain view standpoint. They continue on
14 upstairs. It's at that point in time that the weapon is, in
15 turn, seized.

16 And I think that what really turns on it, what the
17 real issue becomes as it relates to, to that is how reasonable
18 the search is with respect to its continuance at that point in
19 time. And that an officer, I suppose, we could argue and I
20 suppose that any reasonable person could conclude that perhaps
21 the house was vacant, or perhaps that it was not. But
22 regardless of where you come down on that issue, I don't think
23 there's much in conflict about what it is they discover once it
24 is that they are inside. And the exhibits point to that, that
25 we've seen in terms of the amount of work that was done, and

1 the fact that this home was ready.

2 On the other issue, as it relates to the issue of
3 standing and what we began with, I don't think there's any
4 question from the testimony that's been deduced from what we've
5 heard from Mr. Pappert himself, that at least a subjective
6 belief as it relates to Mr. Roberts existed in terms of his
7 ability to be there and to be a guest in the place as he was,
8 was staying there or working security.

9 In addition to that --

10 THE COURT: Does -- on that question of standing, Mr.
11 Tank, isn't it the case that any reasonable expectation of
12 privacy attributed to your -- to Mr. Roberts would have, would
13 have had to have come from some form of permission from Mr. --

14 MR. TANK: Pappert?

15 THE COURT: -- Pappert?

16 MR. TANK: Yes.

17 THE COURT: Right?

18 MR. TANK: That is correct.

19 THE COURT: Are you satisfied with Mr. Pappert's level
20 of authority, in turn, to be able to say anything authoritative
21 in the way of permission?

22 MR. TANK: Your Honor, I think --

23 THE COURT: Doesn't there have to be some showing of
24 agency or authority --

25 MR. TANK: I agree.

1 THE COURT: -- to satisfy the, for example, the city
2 ordinance or just to satisfy a common sense --

3 MR. TANK: Right.

4 THE COURT: -- interpretation of a line of authority,
5 granting permission and so forth?

6 MR. TANK: Right.

7 THE COURT: So what does the evidence tell us about
8 the authority of Mr. Pappert, backing up the purported
9 authority of Mr. Roberts, or at least his subjective belief, as
10 you've described it? And then we have it -- and then another
11 step down the line is the encounter with the officers and what
12 they perceived based upon observations that early morning. Go
13 ahead.

14 MR. TANK: Well, we have from Mr. Pappert's testimony
15 himself, we have a situation where he describes that he was
16 contracted by his uncle that was employed by an insurance
17 company, that's tied back to the mortgage company as it relates
18 to the home itself. We have his testimony where he speaks with
19 this person, and that I believe it's Mr. Norris, that he speaks
20 with Mr. Norris. And that Mr. Norris, who is the person
21 associated with the insurance company, that he is to go out and
22 to do these things as it relates to a home repair standpoint.
23 And then it also extends to the standpoint that Mr. Norris
24 indicates to Mr. Pappert that he is concerned about the safety
25 of what's going on inside of the property itself.

1 So we have a situation where people that are obviously
2 tied to the ownership of the home as it relates to the mortgage
3 company itself, and whatever situation this home finds itself
4 in.

5 THE COURT: Well, the mortgage company is not the
6 owner, based on all the evidence that I've heard.

7 MR. TANK: Right.

8 THE COURT: The owner was identified. We have his
9 name. I didn't write it down, but it's some -- an individual
10 who was named. Mr. Pappert said that the permitting, for
11 example, was taken out in the name of the owner. What do we
12 know about the owner and any agency or even apparent agency
13 that may have been granted by the owner down the line? The
14 work was apparently finished.

15 MR. TANK: Correct. We know the owner wasn't present
16 there. And we know from the testimony that obviously he wasn't
17 residing there at this point in time. But there's been no
18 indication from the testimony so far what the level of
19 authority that the owner, as is listed on the Register of Deeds
20 in Wayne County would indicate, that is correct.

21 THE COURT: Doesn't it -- wouldn't it, doesn't it make
22 sense that there would have to be some, some authority granted
23 by the owner of the property to an agent in order to examine
24 the scope of that agency to determine whether that agent had
25 appropriate latitude, sensible latitude, to deputize an agent

1 of his, or its, to then in turn deputize another agent. Now
2 we're down to the level of Mr. Roberts, who, according to
3 Pappert's testimony, had authority to deputize anybody he
4 wanted to come in and basically live there rent-free. That is
5 the substance of the Pappert testimony.

6 MR. TANK: Your Honor, I would --

7 THE COURT: It seems a little attenuated --

8 MR. TANK: Right.

9 THE COURT: -- to me. Does it to you?

10 MR. TANK: It does, but to a certain level. But I
11 think if we applied reason and common sense when we look at the
12 circumstantial proofs, it would make a lot of sense. It would
13 make sense, for example, once a house was burned down, for an
14 insurance company to want to replace what's there. It would
15 make sense the insurance company and the owner there to provide
16 authority to the people to make sure the home doesn't return to
17 the condition it was once in, where people make off with their
18 belongings.

19 And I'd submit to you, your Honor, I don't have -- we
20 don't have the direct people that can come forward and testify
21 to those things. We have an owner that's in Mississippi, as
22 we've heard from the testimony, we have an insurance company,
23 and then we have the uncle here.

24 THE COURT: I actually missed it, if there was
25 something about Mississippi. I didn't --

1 MR. TANK: Yes. The owner, where there was discussion
2 in the beginning the owner, it may appear on the exhibit
3 itself, the original owner of the home is in Mississippi. And
4 I don't think there was necessarily direct testimony, but there
5 was some reference to it early on in terms of what had taken
6 place.

7 I would submit to you, yes, you're correct, your
8 Honor. There has not been someone that's taken that witness
9 stand that says, yes, I have the authority to do this and that
10 from that, we can establish standing. But what we have is
11 obviously Mr. Pappert who believed people who told him these
12 things had the authority, and then in turn passed that onto Mr.
13 Roberts.

14 And the attenuation, as you point out, is an issue,
15 and it's problematic from the standpoint that by the time we
16 get to Mr. Pappert, or at least three, possibly four levels
17 removed in terms of what one's authority is and onward from
18 there. But I would just indicate that it's my position, the
19 circumstantial proof, the actions of the parties certainly
20 provide at some level for this.

21 THE COURT: Okay.

22 MR. TANK: Your Honor, with that, I have nothing
23 further.

24 THE COURT: Thank you, Mr. Tank.

25 MR. TANK: Thank you.

1 THE COURT: Ms. Mohsin?

2 MS. MOHSIN: Good morning, your Honor.

3 Your Honor, I would like to address the issue of the
4 officers' reasonable suspicion to investigate here. I think
5 that the testimony that was adduced by the Government's
6 witnesses here has been corroborated. Both witnesses that
7 testified on behalf of the Government were Detroit police
8 officers who provided very detailed and thorough testimony
9 about their interactions with the defendants in this case. And
10 though there may have been some inconsistencies in their
11 perceptions of certain events, certainly those inconsistencies
12 don't rise to the level of creating any sort of confusion about
13 what they observed, when they observed it, and the events that
14 transpired.

15 In addition, I would point out that the defendant's
16 witness, Ashley Will, corroborates nearly all the information
17 that was provided by the two law enforcement witnesses, Woods
18 and Quarello here. And that is that, that these two officers,
19 on routine patrol, in a marked police officer wearing what was
20 marked law enforcement uniform were driving in the area of
21 17378 Dresden in the city of Detroit at roughly midnight or so,
22 observed Ashley Will parked across the street from what
23 appeared to be an abandoned home.

24 The windows, all along the first floor of the home
25 were boarded up. The Court has seen those photographers and

1 has heard that testimony. After a brief interaction with this
2 woman, who they knew intended to -- was waiting for someone,
3 they returned later that property to investigate whether or not
4 it was an abandoned home and whether there were individuals
5 inside.

6 And only after observing debris in the yard, snow that
7 had been not shoveled from various walks, but matted down with
8 footprints, ice at the back of the house, a window on the
9 second story opened with a light emanating from it and adult
10 voices emanating from that window, did they begin to suspect
11 that perhaps they ought to investigate some sort of trespassing
12 slash, you know, other activity, illegal activity taking place
13 inside that house.

14 They did that in a brief investigatory stop. The
15 communications that they had with the two defendants in this
16 case I think fall well within *Terry vs. Ohio*. They were trying
17 to ascertain whether the two individuals coming out of what was
18 patently an abandoned house to them had written permission as
19 required by the Detroit City Code to be inside that house.

20 When the defendants indicated that they did not have
21 that permission, the officers then observed the firearm inside
22 of Defendant Sutherland's waistband. Whether he observed it in
23 plain view, or as I submit that was what their testimony was,
24 you know, or if, if he had -- even if he had observed it later
25 on, he was certainly within his right to pat-down this

1 defendant. He testified that he saw the gun and then he seized
2 it. So the events that took place after that, I think, fall
3 well within the case law.

4 There was a protective sweep conducted of the home.
5 Again, they believed it to be abandoned. They had no reason to
6 think otherwise. Once they were inside, they observed the
7 firearm in plain view on the second story of the building.
8 And, and after they realized that these two individuals were
9 going to be taken into custody, an impound of the vehicle was
10 conducted because that vehicle was parked, you know, in the
11 driveway of that house.

12 That impound was not a search under the existing case
13 law, but it was an impounding pursuant to Detroit Police
14 Department impound policy, which requires them to, for the
15 protection of the police department, as well as the possessions
16 of the defendant, to conduct a routine inventory of the vehicle
17 before impounding it. And that vehicle was, in fact, later
18 impounded.

19 So I submit to you, your Honor, that officers acted
20 very reasonable -- very reasonably here. They clearly had a
21 reasonable suspicion to conduct an investigatory stop in
22 connection with *Terry vs. Ohio*. And then all of the evidence
23 that was seized flowed, you know, accordingly.

24 With respect to the issue of reasonable expectation of
25 privacy, your Honor, we don't believe the defendant has made

1 out his burden of establishing a reasonable expectation of
2 privacy, certainly not any interest that society would be
3 prepared to recognize as legitimate.

4 Even if this defendant had a subjective expectation of
5 privacy, I doubt that society would consider a questionable
6 worker, who is employed by a subcontractor, who is further
7 employed by a contractor, who has been retained to repair a
8 house, I doubt society would be willing to accord that
9 individual an expectation of privacy in a home.

10 Mr. Pappert's testimony, I submit to you, your Honor,
11 was very incredible on many different levels, both for his
12 failure to articulate exactly what sort of permission he had
13 given to Mr. Sutherland. At first, he maintained that he gave
14 Mr. Sutherland some sort of surveilling permission that did not
15 include the ability to remain overnight. And then later, he
16 suggested that perhaps he had done that.

17 I think what is clear is that Mr. Sutherland was
18 residing at the property, but he didn't have the lawful
19 authority to do that, and in fact, could not produce any
20 written permission because none existed.

21 For those reasons, we submit that a reasonable
22 expectation of privacy has not been established by Mr. -- and
23 if I said Sutherland, I meant Mr. Roberts -- by Mr. Roberts.
24 But even if it had, the seizure of the firearm that was the
25 subject of this hearing was done during the course of a

1 protective sweep necessitated by the fact that officers, when
2 they encountered these two defendants walking out of the
3 building, they observed another individual walking in the
4 building. And from their point of view, when someone is inside
5 of a building they believe to be abandoned and they are
6 investigating activities in and outside of a house, they are
7 required for their own safety to conduct a protective sweep of
8 the house.

9 And so I submit to you, your Honor, that that firearm
10 was seized in connection with that protective sweep.
11 Therefore, even if there was a reasonable expectation of
12 privacy in this case, the firearm was lawfully seized. And we
13 would rely upon the remainder of the cases and arguments that
14 we have in our brief in support of any other residual
15 arguments.

16 THE COURT: Thank you.

17 MS. MOHSIN: Thank you, your Honor.

18 THE COURT: Well, first, because there are a variety
19 of issues raised here by two defendants coming at this from a
20 slightly different perspective, I intend to write my decision,
21 to make sure the case citations are appropriately recorded, and
22 the significant facts, the salient facts, adequately expressed.
23 But I can tell you the motion on behalf of Mr. Sutherland and
24 the motion on behalf of Mr. Roberts is going to be denied for,
25 for the following essential reasons:

1 Number one, the officers encountered a situation
2 which, from its appearance, a reasonably confident police
3 officer could have interpreted as people inside a vacant
4 building. I don't, I don't know about the use of the term
5 "abandoned" as such. I'm not so sure that this house looked
6 like something that I would call an abandoned building, but it
7 was absolutely boarded up on the first floor. And accordingly,
8 both evaluated by intuition and evaluated under the standards
9 of the Detroit City Ordinances that I referred to earlier, it
10 was not legally habitable, I should say neither legally nor
11 sensibly habitable.

12 You can't live in a house that is windowless from
13 which there was no means of egress in the event of an emergency
14 and so forth. These things are captured in not just Detroit's,
15 but I'm sure virtually every municipality's ordinances
16 concerning habitability and egress and things of that nature.

17 No one should have been in that house at all. That is
18 what a reasonable officer could have concluded from the
19 observations made by Woods and Quarello that early morning.
20 Though, it was obvious that there were individuals there on the
21 second floor, voices were heard, more than one -- it was not
22 specified how many, but more than one from the second floor. A
23 window to which not having been boarded up was open and a light
24 was seen in that room from I believe the backyard, not visible
25 from the street.

1 Further, the house had the appearance of not being
2 cared for in a way that an owner would, specifically shovelling
3 walks and driveways and so forth. I wondered about that and
4 asked the officer his impression. And the photographs are not
5 unambiguous in that regard. The porch deck and the two steps
6 leading to it are fairly free of snow. But the walk leading to
7 the steps is simply iced over or accumulated with snow and it's
8 been walked on. No effort, no apparent effort made to shovel
9 or to clear it down to the hard surface.

10 As I say, that's not unambiguous, but it could be
11 consistent with a home which is not currently occupied, the
12 home, in other words, that is vacant. And people ought not be
13 in vacant buildings without appropriate permission.

14 There has been no permission proven in the facts
15 presented here. Mr. Roberts has an obligation show at least,
16 if not prove, to a reasonable level that he had permission from
17 a person capable of granting permission to be in that house,
18 let alone to be living there, sporadically perhaps, but living
19 there nonetheless.

20 And it makes no sense from the perspective of
21 law-abiding society that an insurance company could be engaged
22 by a homeowner to undertake repairs whereby the insurance
23 company could hire an agent and the agent could hire a
24 subcontractor, and the subcontractor could grant permission to
25 a friend of his to live in the house, and not only that, but to

1 grant additional permission to other people to live in one of
2 the windowless rooms down the stairs.

3 I do not see any way in which society could be held to
4 evaluate that very attenuated series of permissions as being
5 something that could be recognized as legitimate and give rise
6 to a reasonable and legitimate expectation of privacy on the
7 part of someone such as Mr. Roberts, who was simply camping out
8 in what was an otherwise abandoned building.

9 Even more fundamentally, we haven't heard from the
10 owner. We haven't heard from the principal contractor, that
11 would be the uncle of the gentleman who testified here today,
12 and who testified not particularly convincingly, I might add,
13 nor who appeared to be interested in answering questions that
14 were fairly direct and reasonably understood.

15 I am quite convinced that the officers acted, acted
16 upon a reasonable and -- not only articulable, but articulated
17 suspicion of wrongdoing, that is, squatting in a vacant
18 building without permission. And they approached the situation
19 cautiously, I think, with that belief. They stated they had
20 that belief. It is certainly the case that a reasonable
21 officer could have gleaned that impression from the
22 circumstances.

23 And that would be true, by the way, even if other
24 officers a month earlier had been to the house and had
25 investigated and had, for their own purposes, determined that

1 there was not an untoward situation, not drug dealing going on,
2 not improper squatting and so forth. And even if that were the
3 case that impression was communicated in a way that Woods
4 and/or Quarello may have learned about it, as was suggested by
5 Mr. Hackett's argument for a continuance, perhaps he would
6 learn something like if these other officers were called into
7 testify, he said. I don't even think if that testimony were
8 presented it would make a difference, because as the saying
9 goes, that was then and this is now, from the perspective of
10 officers on the 11th or 12th of February. Who knows what the
11 situation other officers a month earlier may have encountered,
12 what facts they may have been faced with.

13 An officer on the scene in the position of Woods and
14 Quarello is presented with a unique set of circumstances on
15 that cold February night that may or may not have matched up
16 with what was going on a month earlier. It may have been
17 similar, perhaps it wasn't. The officers have no way of
18 cataloguing and evaluating those kinds of things.

19 The only thing that we can say is that, with or
20 without that additional information about what might have gone
21 on a month earlier. Woods and Quarello are faced with a set of
22 facts that, that could have given a reasonable officer a level
23 of suspicion of illegal activity afoot that, at a minimum,
24 permitted them to approach and momentarily detain or ask
25 questions of the individuals coming out of the house, Mr.

1 Roberts and Mr. Sutherland.

2 Whereupon, Mr. Sutherland was asked to put the large,
3 what sounds like a pound's worth of brass and other keys in his
4 hand, a large collection of keys, to put them on the roof of
5 the vehicle and please, as we speak to you here, the officer
6 said. And in doing that, his overcoat momentarily opened,
7 within which the officer could see that he had a firearm. He
8 asked him, are you armed? The answer was no. The officer,
9 knowing what the situation was, simply reached in and got the
10 firearm.

11 Well, even without that series of encounters, even
12 without the coat swinging open, given the circumstances that
13 were within the knowledge of the officers by that time, even
14 before Mr. Sutherland was asked to put the keys on the roof of
15 the car, that a reasonable officer under *Terry vs. Ohio* could
16 simply have asked Mr. Sutherland just to stand still for a
17 moment, let me just do a quick pat-down, whereupon this
18 firearm, in the way of the language it was described, would
19 have been found by the officer and retrieved and safeguarded,
20 and the same result would have been obtained.

21 So with or without seeing it, it's -- I'm not prepared
22 to say that this is a case of inevitable discovery, but the
23 circumstances were such that it would have pretty clearly led
24 to just about to the same result. I'll say no more about that.
25 I don't think that's likely to be part of the Court's analysis.

1 But from that point on, the events unfolded. That
2 firearm was found. The arrest was made. Handcuffs were
3 applied. The officer entered the home, which again still
4 appeared to be vacant, except for a person that had gone
5 inside; Ashley Will had gone inside. There may still have been
6 others inside. One or more officers entered the home,
7 encountered her, made a quick sweep of the downstairs, the
8 boarded-up downstairs, which by this time would have appeared
9 to the officers to be not, not so "abandoned" but still vacant,
10 vacated of legitimate residence because of the boarded-up
11 nature of the windows. And up the stairs, sweeping the few
12 rooms in the upper level revealed in plain sight, standing
13 against the wall, the firearm that's the subject of the other
14 part of this motion.

15 A protective sweep is recognized as legitimate,
16 assuming it is indeed a sweep and not an invasive search
17 without a warrant. There was no search beyond the sweep here,
18 as testified to by the officers. The firearm was standing up
19 against the wall, near the window that was still open from
20 which the officers heard the voice, the voice earlier.

21 So there was ample reasonableness in my view in the
22 search-like activities engaged in here. And that includes the
23 impoundment of the vehicle, with the arrests, the custodial
24 arrests now having been made. The vehicle or any vehicle would
25 have been impounded, and before being impounded, would be

1 inventoried. And upon being inventoried, the firearm in the
2 trunk was found and seized and whatever else was -- I don't
3 think there was anything else of evidentiary value in the
4 vehicle, but at least that, as one of the two officers, I think
5 Quarello testified.

6 So another, a backup officer that had come to the
7 scene by this time opened the trunk with a key, I believe, and
8 called him over and said you need to see this. Look here. In
9 which Quarello, again, I believe it was Quarello said he did,
10 walked over and saw it, the firearm which he described, which
11 was seized and which will be admitted as evidence in the case.

12 So the sum and substance of it is that I thank counsel
13 for their presentation and for their arguments. And the
14 motions will be, in due course, denied for reasons that I've
15 briefly articulated here. And the Court stands adjourned until
16 that matter is determined and docketed, at which point we will
17 reassess the scheduling of the case. I don't know what other
18 dates we have currently set, but they will be reexamined as,
19 and then reset in consultation with counsel after I get the
20 order shaped up and entered, which will be probably in the
21 order of a week to ten days. That will be my hope at least.

22 All right, counsel. Anything else for the record?
23 For the Government, Ms. Mohsin?

24 MS. MOHSIN: Nothing further, your Honor. I do have
25 the exhibits should the Court require them.

1 THE COURT: Let's have them maintained in the event
2 I'll call on them, that will be the original. I have
3 photocopies, the photographs you have.

4 MS. MOHSIN: I don't believe you have photocopies of
5 the exhibits from this, but you do have --

6 THE COURT: From today's session, no, I do not have
7 those. I'll call upon you in the event that I will want to
8 inspect those. I've heard them described.

9 MS. MOHSIN: Okay.

10 THE COURT: Mr. Hackett, anything else for the record,
11 before we close?

12 MR. HACKETT: Just, Judge, just one thing. It doesn't
13 really relate to this. It relates to my client. I was just
14 notified that my client's mother fell and broke her left hip
15 and her right shoulder. Apparently she's in a Four Seasons
16 nursing home. My client would like me to motion the Court for
17 emergency bond hearing. This is the first that I've heard of
18 it. I believe she's in Four Seasons Nursing Home right now.
19 And I'd like to get a date if the Court would indulge us.

20 THE COURT: Well, under some circumstances, defendants
21 have been, who were in custody have been granted, for example,
22 a furlough, a brief period of time on which they are bonded out
23 of custody and permitted to attend, for example, a funeral or
24 something similar to that.

25 I would suggest that you speak first both with

1 Pretrial Services and with government counsel and see if an
2 agreement might be reached for the purpose that you're
3 suggesting here. And if so, I'll certainly consider it. But
4 if not, I'll consider a motion if you want to do -- well, I'm
5 not predicting a result, but I'll consider a motion if you want
6 to formulate one and lay out the specifics. All right, sir?

7 MR. HACKETT: Thank you, very much, Judge.

8 THE COURT: Mr. Tank, anything else for the record?

9 MR. TANK: I have nothing. Thank you.

10 THE COURT: We stand in recess.

11 THE CLERK: All rise. Court is now in recess.

12 (Proceedings adjourned at 12:30 p.m.)

13 * * *

14
15 **CERTIFICATE OF REPORTER**

16 As an official court reporter for the United States
17 District Court, appointed pursuant to provisions of Title 28,
18 United States Code, Section 753, I do hereby certify that the
19 foregoing is a correct transcript of the proceedings in the
20 above-entitled cause on the date hereinbefore set forth.

21
22
23 s/ Christin E. Russell

24 CHRISTIN E. RUSSELL, CSR, RPR, FCRR, CRR

25 Federal Official Court Reporter